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MISCELLANEOUS NEW MEXICO PUBLIC LANDS BILLS AND NEZ PERCE NATIONAL HISTORICAL PARK ADDITION

HEARING

BEFORE THE

SUBCOMMITTEE ON
PUBLIC LANDS, NATIONAL PARKS AND FORESTS

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

S. 2521 S. 2527 S. 2597
S. 2684 S. 2804

JULY 27, 1990

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MISCELLANEOUS NEW MEXICO PUBLIC LANDS BILLS AND NEZ PERCE NATIONAL HISTORICAL PARK ADDITION

FRIDAY, JULY 27, 1990

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS,
NATIONAL PARKS AND FORESTS,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:37 a.m., in room SD-366, Dirksen Senate Office Building, Hon. Jeff Bingaman, presiding.

OPENING STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

Senator BINGAMAN. This is a hearing of the Subcommittee on Public Lands, National Parks and Forests of the Senate Energy and Natural Resources Committee. I want to thank Chairman Bumpers for scheduling the hearing.

The purpose of the hearing is to receive testimony on several bills that affect public land management. Since we are considering a number of bills, I would like to begin with a very brief description of each.

The first four bills affect my home State of New Mexico. These bills reflect the strong commitment that the State has had to conserving natural resources and protecting irreplaceable cultural treasures.

I am very pleased Senator Domenici has joined me in co-sponsoring three of the bills, and I have joined him in the other. The Cochiti Land Exchange Act would correct a longstanding wrong by the Federal Government which involved a 1966 land exchange between the U.S. Forest Service and Dunigan Enterprises, and subsequent litigation, whereby the Dunigan title to the exchanged land was successfully challenged by the Santo Domingo Pueblo.

The Forest Service in correspondence to the New Mexico congressional delegation has acknowledged that the Baca owners were treated unfairly by the Federal Government, albeit by different agencies. This bill will correct not only the individual wrong to the owners of the Baca but also reestablish the integrity of the Forest Service's land exchange program.

A second provision of the bill would provide for further study of the Baca property in New Mexico for future Federal acquisition, and this 3-year effort of the Forest Service is a necessary prelude to future discussions on the Baca. This area is a combination of some of the world's most intriguing geology and beautiful scenery, and its partial acquisition for future generations is an important goal of this bill at some future point.

The Enchanted National Forest Information and Education Study Act of 1990, which is S. 2527, would direct the Secretary of Agriculture to conduct a study to determine the need for a national forest information center and expanded environmental education programs in New Mexico.

The Forest Service has an environmental education program. However, I am concerned that in order to reach the public in our State, this program needs a centralized focal point from which to provide educational and interpretation programs. It is my intent that this program would emphasize environmental education for the youth from our growing urban areas.

S. 2597, which is sponsored by Senator Domenici, would grant authority to the State Commissioner of Public Lands in our State to exchange any land granted or confirmed by the act for any land of the United States or an agency thereof. This is essentially an amendment to our enabling act which was adopted by the Congress at the time of statehood.

The Prehistoric Trackways Study Act of 1990, which is S. 2684, is a bill providing for the study and protection of a very significant discovery of fossil trackways near Las Cruces, New Mexico. Although fossils can be found around the world, only a few sites contain information which the scientific community considers significant. One such site is that which was recently discovered in the Robledo Mountains near Las Cruces.

The significance of the find are these spectacular fossilized trackways of amphibians, reptiles, arthropods and insects made 280 million years ago. The trackways are unique in length and include prints of animals previously unknown. This discovery has the attention of the scientific community, which has confirmed the significance of the discovery, and the study that the legislation calls for would recommend to Congress how the site can be interpreted and what permanent protection actions would be appropriate.

S. 2804 is the last bill to be considered by the committee. The bill sponsored by the distinguished Senator from Idaho, Senator McClure, would amend the act of May 15, 1965, authorizing the Secretary of the Interior to designate the Nez Perce National Historical Park in the State of Idaho and for other purposes. The act would be amended to include additional sites in the State of Oregon, Washington, Montana, Wyoming, and Oklahoma. In addition, funding for the act would be increased so as to provide for the additional sites.

Before we call up the first panel of witnesses, let me just take care of a couple of administrative items. We would ask that each witness summarize his testimony and limit his remarks to 5 to 10 minutes. The entire written statement, of course, will be put in the record, and we will keep the record open for 2 weeks following the hearing to receive additional comments and testimony.

[The texts of the bills follow:]

II

101st CONGRESS
2d Session

S. 2521

To exchange certain lands in the State of New Mexico and for other purposes.

IN THE SENATE OF THE UNITED STATES

April 25 (legislative day, April 18), 1990

Mr. Bingaman (for himself and Mr. Domenici) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To exchange certain lands in the State of New Mexico and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Cochiti Land Exchange Act of 1990".

SEC. 2. PURPOSES AND DEFINITIONS.

(a) Purposes.—The purposes of this Act are—

(1) to provide for the exchange of certain lands of Dunigan Enterprises and the United States; and

(2) to provide for a study of the possible Federal protection of certain lands in New Mexico.

(b) DEFINITIONS.—For the purposes of this Act—

(1) the term "Dunigan Enterprises" means Dunigan Enterprises, Incorporated, a Texas corporation, and BL&C Co. and BL&C Co. No. 2, Texas partnerships; and

(2) the term "Secretary" means the Secretary of Agriculture.

SEC. 2. LAND EXCHANGE.

(a) EXERCISE OF OPTION.—

(1) Notwithstanding any other law, upon receipt by the Secretary of an option from Dunigan Enterprises in which Dunigan Enterprises offers to convey the lands described in section 3(a) to the United States in exchange for the lands of the United States described in section 3(b), the Secretary shall exercise the option.

(2) The Secretary shall exchange and convey to Dunigan Enterprises the lands described in section 3(b) upon—

(A) conveyance to the United States of the lands described in section 3(a) by Dunigan Enterprises and acceptance of title to that land by the Secretary; and

(B) the execution by Dunigan Enterprises of a release of all claims relating to the real property known as the "Cochiti properties" located in Sandoval County, New Mexico.

(b) TERMS AND CONDITIONS.—(1) All conveyances shall be by general warranty deeds and shall convey all right, title, and interest in and to the described lands.

(2) Nothing in this subsection shall preclude such other terms and conditions on the conveyances of lands or interests therein as the Secretary and Dunigan Enterprises may agree upon.

(c) GOOD TITLE.—For purposes of conveying good and merchantable title, all right, title, and interest in and to the lands described in subsection 3(b) are confirmed to be in the United States and under the jurisdiction of the Secretary of Agriculture. The United States shall defend such title against any and all claims.

SEC. 3. LAND DESCRIPTIONS.

(a) LANDS OF DUNIGAN ENTERPRISES.—The lands of Dunigan Enterprises available for conveyance to the United States are the lands situated in the State of New Mexico aggregating approximately 36 acres and described as follows:

New Mexico Principal Meridian, Sandoval County, Township 19 North, Range 3 East: The portions of the Spanish land grant surveyed and known as Baca Location No. 1 described as follows:

(1) Parcel 1.—Beginning at Mile Point No. 11 on the south boundary of Baca Location No. 1; thence westerly along the south boundary of Baca Location No. 1 to its intersection with the constructed centerline of Forest Development Road 133; thence on a continuation of the south boundary of Baca Location No. 1, 33 feet; thence on an approximate bearing of N. 26° E., about 720 feet as scaled from the Forest Service's topographic map of the area, to the south boundary of the easement for New Mexico State Highway No. 4; thence in an easterly direction along the State highway easement to its intersection with the south boundary of Baca Location No. 1; thence westerly along the south boundary of Baca Location No. 1 to the point of beginning, being Mile Point No. 11, containing about 27 acres, subject to confirmation by formal survey and acceptable plat required to provide an acceptable legal description and record acreage.

(2) Parcel 2.—Beginning at Mile Point No. 10 on the south boundary of Baca Location No. 1; thence in a westerly direction along the south

boundary of Baca Location No. 1, 423 feet to a point on the west side of the east fork of the Rio Jemez; thence N. 38° E., 660 feet; thence N. 86° E., 170 feet; thence S. 70° E., 477 feet; thence S. 34° E., 364 feet to the south boundary of Baca Location No. 1; thence along the south boundary of Baca Location No. 1 to the point of beginning, being Mile Point No. 10, containing approximately 9 acres, subject to confirmation by formal survey and acceptable plat required to provide an acceptable legal description and record acreage.

(b) LANDS OF THE UNITED STATES.—National Forest lands available for conveyance to Dunigan Enterprises are all of the land situated in the State of New Mexico described as follows:

(1) New Mexico principal meridian, Sandoval County, Township 15 North, Range 6 East:

(A) Sec. 10. The portion of lot 1 lying northeast of the Dunigan Tract as described at volume 21, pages 361–363 of the Sandoval County records.

(B) Sec. 11. Lots 1, 2, and 3 and the portion of lots 4 and 5 of the N½, SW¼, and SE¼ lying northeast of the Dunigan Tract as described in volume 21, pages 361–363 of the Sandoval County records.

(C) Sec. 12. Lots 1, 2, 3, and 4, S½.

(D) Sec. 13. Lots 1, 2, 3, and 4, NE¼, NW¼, N½, and NE¼.

(E) Sec. 14. The portion of lots 1 and 2 lying northeast of the Dunigan Tract as described in volume 21, pages 361–363 of the Sandoval County records.

(2) New Mexico principal meridian, Santa Fe County, Township 15 North, Range 7 East:

(A) Sec. 7. Lots 1, 2, 3, and 4, S½ and S½.

(B) Sec. 8. Lots 8 and 9.

(C) Sec. 17. Lots 2, 3, 6, and 7.

(D) Sec. 18. Lots 1, 2, 5, and 6, N½, N½, N½, and SE¼,

containing approximately 1,700 acres, subject to easements and rights of way of record.

(c) CORRECTIONS.—The Secretary and Dunigan Enterprises may by agreement correct any errors in the legal descriptions made in subsections (a) and (b).

SEC. 4. ADDITIONAL COMPENSATION.

In addition to the conveyance of land to Dunigan Enterprises under section 2, there shall be paid to Dunigan Enterprises the sum of $1,075,527 from the permanent judgment appropriation, on certification by the Secretary to the Comptroller General that the land conveyances and release described is section 2(a)(2) have been completed.

SEC. 5. DISPOSITION OF LANDS.

Lands conveyed to the United States pursuant to this Act shall become part of the Santa Fe National Forest and shall be administered by the Secretary pursuant to the Act of March 1, 1911 (36 Stat. 961).

SEC. 6. CONSUMMATION OF TRANSACTION.

It is the intent of the Congress that the conveyances authorized in section 2 shall be made within 1 year after the date of enactment of this Act.

SEC. 7. LAND OWNERSHIP ADJUSTMENT STUDY.

(a) STUDY.—The Secretary shall conduct a study of Baca Location No. 1 to address—

(1) the scenic, geologic, recreational, timber, mineral, grazing, and other multiple use attributes of Baca Location No. 1; and

(2) options for acquisition of Baca Location No. 1 by the United States, in whole or part, by purchase, exchange, donation, or otherwise.

(b) COOPERATION.—(1) The study required by subsection (a) shall be conducted in cooperation with the owners of

Baca Location No. 1, other interested parties, and the general public.

(2) This Act does not authorize entry upon Baca Location No. 1 by any person without the express permission of the landowner, and the Secretary shall make prior arrangements with the landowner for satisfactory access to the land for purposes of this section.

(c) ENVIRONMENTAL IMPACT.—The study required by subsection (a) shall not require preparation of an environmental impact statement.

(d) REPORT.—The Secretary shall report the results of the study required by subsection (a) and any recommendations for legislation not later than 3 full fiscal years after the date of enactment of this Act to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such funds as are necessary for the study required by subsection (a).

II

101st CONGRESS
2d Session

S. 2527

To direct the Secretary of Agriculture to conduct a study to determine the need for a National Forest Information Center and an expanded environmental education program in New Mexico.

IN THE SENATE OF THE UNITED STATES

April 26 (legislative day, April 18), 1990

Mr. Bingaman (for himself and Mr. Domenici) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To direct the Secretary of Agriculture to conduct a study to determine the need for a National Forest Information Center and an expanded environmental education program in New Mexico.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Enchanted National Forests Information and Education Study Act of 1990".

SEC. 2. FINDINGS.

The Congress finds that—

(1) environmental education is fundamental to expanding our understanding of the environment;

(2) the natural resources found on national forests in New Mexico, the Land of Enchantment, can contribute to environmental education programs;

(3) the Forest Service plays a vital role in the environmental education of all Americans;

(4) a center to provide information on the national forests in New Mexico would increase public awareness of their national forests, increase participation in management decisions, and improve the public's appreciation of their national forests;

(5) there is not a central facility dedicated to providing information on the national forests in New Mexico to residents and out-of-State visitors; and

(6) in light of the opportunities provided by national forests and the importance of environmental education, it is necessary to identify, through a comprehensive study, the opportunities that are available to provide information to the public on the national forests of New Mexico and to expand the environmental education program for those forests.

SEC. 3. STUDY AND REPORT BY THE FOREST SERVICE.

(a) STUDY.—The Secretary of Agriculture, acting through the Chief of the Forest Service, shall conduct a study of the opportunities to establish a center to provide information on the national forests in New Mexico and to expand the environmental education program for those forests.

(b) REPORT.—Not later than 1 year after the date that funds are made available for the study referred to in subsection (a), the Secretary of Agriculture shall transmit the Study to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

(c) CONTENTS OF STUDY.—The study referred to in subsection (a) shall develop alternative means for the national forests in New Mexico to provide information that improves public awareness and participation in management of their national forests and to expand the environmental education program for those forests. Alternatives shall include an information and education center located in or near Albuquerque, New Mexico, and an expanded education outreach program.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

II

101st CONGRESS
2d Session

S. 2597

To amend the Act of June 20, 1910, to clarify in the State of New Mexico authority to exchange lands granted by the United States in trust, and to validate prior land exchanges.

IN THE SENATE OF THE UNITED STATES

May 9 (legislative day, April 18), 1990

Mr. Domenici (for himself and Mr. Bingaman) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To amend the Act of June 20, 1910, to clarify in the State of New Mexico authority to exchange lands granted by the United States in trust, and to validate prior land exchanges.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORITY TO EXCHANGE LAND.

Section 10 of the Act of June 20, 1910 (36 Stat. 563), is amended by inserting after the ninth paragraph thereof the following new paragraph:

"The State commissioner of public lands may exchange any land granted or confirmed by this Act for any land of the United States or an agency thereof, a State agency or political subdivision, a beneficiary of lands granted or confirmed by this Act, an Indian tribe or pueblo, or a private entity when the commissioner finds, after consultation with the chief administrative officer of the affected beneficiary of lands granted or confirmed by this Act, that—

"(1) based upon appraisals of the true value thereof, the value of the land to be received by the State is equal to or greater than the land to be conveyed by the State; and

"(2) the proposed exchange is beneficial to the interests of the affected beneficiary.".

SEC. 2. EFFECTIVE DATE.

(a) FINDING.—The Congress finds that the retroactive application of the amendment made in section 1 to approve, validate, and ratify land exchanges made prior to the effective date of the amendment will not prejudice the interests of any person and will benefit the interests of the parties to such exchanges, the beneficiaries of land granted or confirmed under the Act of June 20, 1910, and the public.

(b) RETROACTIVE APPLICATION.—On the date that the Secretary of State of the State of New Mexico certifies that the people of the State of New Mexico have consented to this Act by amendment of article XXI of the constitution of the State of New Mexico, the amendment made in section 1 shall be effective as of June 20, 1910, so as to approve, validate, and ratify all exchanges made after that date of lands granted or confirmed to the State of New Mexico after that date.

SEC. 3. CONSENT TO CONSTITUTIONAL AMENDMENTS.

The consent of Congress is given to amendments to article XXI of the Constitution of the State of New Mexico to consent to the amendment made in section 1, to become effective as of June 20, 1910, as provided in section 2.

II

101st CONGRESS
2d Session

S. 2684

To authorize a study of methods to protect and interpret the nationally significant fossil trackways found in the Robledo Mountains near Las Cruces, New Mexico.

IN THE SENATE OF THE UNITED STATES

May 24 (legislative day, April 18), 1990

Mr. Bingaman (for himself and Mr. Domenici) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To authorize a study of methods to protect and interpret the nationally significant fossil trackways found in the Robledo Mountains near Las Cruces, New Mexico.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Prehistoric Trackways Study Act of 1990".

SEC. 2. FINDINGS AND PURPOSES.

(a) Findings.—The Congress finds that—

(1) fossils are important for scientific studies of prehistoric life on earth;

(2) lands administered by the Bureau of Land Management in the Robledo Mountains in New Mexico contain one of the most important fossil discoveries of the 20th century;

(3) discoveries have included prehistoric tracks of amphibians, reptiles, arthropods, and insects; extensive plant fossils; and clues to the weather and climate of the period;

(4) fossil footprints that form trackways help scientists recreate the environment and habitat that supported prehistoric life;

(5) nearly 100 trackways from the Permian Age have been uncovered in the Robledo Mountains;

(6) the trackways are over 280,000,000 years old, and they document the emergence of life from water to land;

(7) the trackways are unique in length and represent most taxonomic groups, including many prints of previously unknown animals;

(8) the trackways and other fossils are being lost for scientific study through unsupervised collecting and commercial quarrying; and

(9) the trackways and fossils found in the Robledo Mountains and surrounding areas should be evaluated

for their potential protection and value for scientific interpretation and education.

(b) PURPOSES.—The purposes of this Act are—

(1) to require that a study be conducted to consider appropriate means to protect the discoveries and identify the scientific, interpretive, and public education values associated with these fossils; and

(2) to provide for interim protection of the fossils.

SEC. 3. INTERIM WITHDRAWAL OF THE SENDEROS PREHISTORICOS PROTECTION AREA.

(a) WITHDRAWAL.—The area of important discoveries, consisting of approximately 40 acres, as depicted on the map described in subsection (b), are withdrawn from the operation of public land laws except for mineral leasing for not to exceed 2 years after conclusion of the study.

(b) MAP.—The withdrawal area is depicted on the map entitled "Prehistoric Trackways Protection Area", numbered and dated 1990, which shall be on file and available for public inspection in the New Mexico State Office of the Bureau of Land Management.

SEC. 4. STUDY AND REPORT.

(a) STUDY.—The Secretary of Interior, in cooperation with State and local governments and institutions of higher education, shall conduct a study of the alternatives for the protection and interpretation of the fossil resources of the Robledo Mountains.

(b) REPORT.—Not later than 1 year after the date that funds are made available for the study required by subsection (a), the Secretary of Interior shall transmit the study to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

(c) CONTENTS OF STUDY.—(1) The study required by subsection (a) shall include an analysis of the importance of the discoveries at the site and an evaluation of the feasibility of developing a facility in New Mexico that would evaluate, curate, display, and interpret a portion of the fossils found in the area.

(2) The study required by subsection (a) shall recommend the proper administrative designation for the area and the agency that should be designated to manage the area.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

II

101st CONGRESS
2d Session

S. 2804

To amend the Act of May 15, 1965, authorizing the Secretary of the Interior to designate the Nez Perce National Historical Park in the State of Idaho, and for other purposes.

IN THE SENATE OF THE UNITED STATES

June 28 (legislative day, June 11), 1990

Mr. McClure (for himself, Mr. Adams, Mr. Baucus, Mr. Burns, and Mr. Symms) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To amend the Act of May 15, 1965, authorizing the Secretary of the Interior to designate the Nez Perce National Historical Park in the State of Idaho, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Section 1 of the Act entitled "An Act to authorize the Secretary of the Interior to designate the Nez Perce National Historical Park in the State of Idaho, and for other purposes", approved May 15, 1965, (79 Stat. 110) as amended (hereinafter referred to as "the Act") is amended by inserting after "the Nez Perce Country of Idaho" the words "and in the States of Oregon, Washington, Montana, Wyoming, and Oklahoma".

SEC. 2. Section 2 of the Act is amended by adding at the end the following new sentence: "Sites to be so designated shall include the following sites as described in the 1989 National Park Service draft "Nez Perce National Historical Park Additions Study": Tolo Lake, Idaho; Looking Glass' 1877 Campsite, Idaho; Buffalo Eddy, Washington and Idaho; Doug Bar, Washington and Idaho; Camas Meadows Battle Sites, Idaho; Joseph Canyon Viewpoint, Oregon; Old Chief Joseph's Gravesite and Cemetery, Oregon; Traditional Campsite at the Fork of the Lostine and Wallowa Rivers, Oregon; Burial Site of Chief Joseph the Younger, Washington; Nez Perce Campsites, Washington, Big Hole National Battlefield, Montana; Bear's Paw Battleground, Montana; and Canyon Creek, Montana".

SEC. 3. (a) Section 3 of the Act is amended by replacing the colon in the first sentence with a period and striking the remainder of the sentence and by adding the following new sentence at the end thereof: "Lands and interests therein owned by a State or local political subdivision may be acquired only by donation or exchange and private lands or interests therein may be purchased only on a willing seller basis".

(b) Section 4(a) of the Act is amended by striking the third sentence.

(c) Section 6(a) of the Act is amended by striking the words "State of Idaho, its" and inserting in lieu thereof the words "States of Idaho, Oregon, Washington, Montana, Wyoming or Oklahoma, their".

SEC. 4. Section 7 of the Act is amended by striking the number "$630,000" and inserting the number "$2,130,000" in lieu thereof, and by striking the number $4,100,000" and inserting the number "$9,300,000" in lieu thereof.

Senator **BINGAMAN**. Senator McClure.

STATEMENT OF HON. JAMES A. McCLURE, U.S. SENATOR FROM IDAHO

Senator **McCLURE**. Mr. Chairman, I would ask unanimous consent that my prepared statement be inserted in the record.

Senator **BINGAMAN**. It will be included.

Senator **McCLURE**. I do want to specifically and particularly note my word of thanks to the Chairman of this subcommittee for having scheduled action on this bill so quickly. I do appreciate it. I hope we can move forward on it yet this session and just note that, as most people know, the Nez Perce Indians did indeed affect more than one State, and that is particularly true in the historic lore of our country.

The historic retreat of the Nez Perce in their last battle and the trek that was led by Chief Joseph led also to the interest of some other States, particularly the State of Montana, in this bill; and it is co-sponsored by Senator Adams from Washington, Senators Baucus and Burns from Montana, and my colleague, Senator Symms, from Idaho.

[The prepared statement of Senator McClure follows:]

PREPARED STATEMENT OF HON. JAMES A. McCLURE, U.S. SENATOR FROM IDAHO, ON S. 2804

Mr. Chairman, thank you for holding this hearing in such an expeditious manner on S. 2804, which would expand the Nez Perce National Historical Park. The bill will include additional historically significant sites in my own state of Idaho, as well as in Oregon, Washington, Montana, Wyoming and Oklahoma.

This legislation is the result of a lengthy study conducted by the National Park Service, which has identified a series of historical sites for potential inclusion in the existing Nez Perce National Historical Park headquartered in Spalding, Idaho. I am pleased to note that this legislation has the bipartisan support of Senators from each of the States containing sites, and also has the strong support of the Nez Perce Tribal Executive Committee, the governing body of the Tribe, located in Lapwai, Idaho, that is so much a part of the history of our Nation and the more recent history of the Pacific Northwest.

Since the time when the Nez Perce National Historical Park was established by Act of Congress on May 15, 1965, additional attention has been devoted to the study of the Nez Perce War of 1877, the last military action in which the United States of America and an Indian Tribe were engaged in hostilities. Beyond the scholarly research and study that has occurred over the last 35 years, there remains an image of Chief Joseph of the Nez Perce, retreating from the Northwest, engaging in battle after battle against a superior force of U.S. soldiers and arms, as he led his band in a more than thousand mile journey across Idaho, Wyoming, and Montana. Military historians to this day recognize the Nez Perce efforts as one of the great tactical retreats in military history. The citizens of my state are proud to have the existing, unique Nez Perce National Historical Park located in the state of Idaho. It involves cooperative management of twenty-four sites by the National Park Service, the Nez Perce Tribe, the state of Idaho, the U.S. Forest Service, the Bureau of Indian Affairs, and private landowners. Only four of the current sites are owned by the National Park Service.

The present geographical limitation in the statute, specifying sites located only in the State of Idaho, requires that this unique Park be limited to telling only a part of the story of Chief Joseph and the Nez Perce War of 1877. Such borders did not, however, exist during the summer and fall of 1877 when Chief Joseph led his band of Nez Perce on a forced march across more than a thousand miles of unforgiving wilderness, the U.S. Army hot on their heels.

The purpose of this legislation is to fill in the gaps in the story of the Nez Perce Tribe by including those historically significant sites that are critical to a full understanding of the importance of their battle with the U.S. Army in the history of our nation. Our bill would expand the Nez Perce Park to include sites ranging from

Wallowa County in northeastern Oregon, Chief Joseph's birthplace, and a crucial part of the 1877 war, to the Bear Paw Battlefield in Montana, where the Nez Perce surrender occurred. In addition, the legislation includes the site of Chief Joseph's final resting place in a graveyard in Nespelem, Washington on the Colville Indian Reservation, and also makes it possible to later include historically significant sites in Wyoming and Oklahoma that are also very much part of the Nez Perce's fascinating history.

It is a fitting tribute to Chief Joseph's memory, and an inspiring commentary on the centennial spirit that binds our states in the Northwest that many of the Senators from the states through which Chief Joseph travelled, Senators Adams, Baucus, Burns, and Symms, have cosponsored this bill with me. I urge my colleagues to work with us to see that this legislation is passed and signed by President Bush during the 101st Congress.

Senator BINGAMAN. Thank you very much. Senator Burns, did you have a statement you wished to make at this point?

Senator BURNS. No, Mr. Chairman, I do not, and I pass along my thanks to the Chairman for calling these hearings. I would be interested in hearing from the witnesses.

Thank you.

Senator BINGAMAN. Senator Domenici.

STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Senator DOMENICI. Let me ask if my statement on all of the New Mexico matters could be made part of the record.

Senator BINGAMAN. It will be made part of the record.

Senator DOMENICI. I will quickly state that I think that the facts are compelling, that we ought to modify the enabling authority of the State of New Mexico as far as its public lands.

I have some details on that and I will just insert them. The Cochiti Land Exchange Act, I think the study as to future use is something we ought to do with reference to the Baca location, but I also think it is good that we finally resolve this issue with reference to the Dunigan Enterprises and the miscarriage that has occurred over the years and resolve that in the manner described in the bill.

Clearly, the Enchanted National Forest and Prehistoric Trackway Studies is an exciting proposal with tremendous prospects for our generation and many generations to come to learn, and the other bill with reference to establishing a better way for our young people to study and learn about the forests seems to me to be something we ought to do also.

So I am here to support them all, and I might say to the Chairman, I have a series of conflicts—and to the New Mexicans. At 10 we have an appropriations mark-up on two or three bills, and I will try my best to share the time here, to help out and be there also.

[The prepared statement of Senator Domenici follows:]

PREPARED STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO, ON S. 2597, S. 2521, S. 2527, AND S. 2684

Mr. Chairman, Thank you for holding this hearing today on S. 2597—to grant the consent of Congress to an amendment to the New Mexico Enabling Act; S. 2521—the Cochiti Land Exchange Act; S. 2527—the Enchanted National Forests Information and Education Study Act; and S. 2684—the Prehistoric Trackways Study Act.

As the author of S. 2597, I also wanted to thank you for your cosponsorship of that measure. I am pleased to be a cosponsor of the other three bills and commend you for your leadership in introducing them.

NEW MEXICO ENABLING ACT AMENDMENT

The amendment proposed by S. 2597 would permit the State of New Mexico to exchange for beneficial purposes lands granted or confirmed to it by the United States when New Mexico was admitted to the Union.

In 1910, Congress passed the Enabling Act that led to statehood for New Mexico. Subsequently, the people of New Mexico consented to the Enabling Act, and it became a part of New Mexico's fundamental law as if it had been incorporated directly into the New Mexico Constitution.

Pursuant to the Enabling Act and other acts, the Federal Government transferred approximately 13 million acres of land to the State of New Mexico to be held in trust for certain specific purposes. These lands are managed and administered by the State Land Commissioner.

Congress placed very strict limits on the disposal of the trust lands granted under the Enabling Act to New Mexico and Arizona—stricter limits than it had placed on any other States. Under the Enabling Act, the State Land Commissioner can only dispose of trust lands by sale or lease to the highest bidder at a public auction, which must be advertised for 10 weeks. Prior to the auction, the lands must be appraised, and no sale or lease can be made for less than the appraised fair market value of the land. Any sale or lease of trust lands that does not conform with the requirements of the Enabling Act is null and void.

New Mexico has not amended its Enabling Act to permit such exchanges, except for the limited purposes of exchanging trust lands for National Forest lands.

The New Mexico Attorney General has issued a written opinion that the State Land Commissioner lacks the authority to exchange trust lands for other lands—except for National Forest lands—because of the Enabling Act's requirements of appraisal and public auction.

The State Land Commissioner seeks to conduct land exchanges with the Anthony, Los Lunas, and Moriarity School Districts for school sites, with the City of Roswell for an airport expansion, with the Bureau of Land Management for wilderness areas, and with other Federal and State agencies, cities, Indian tribes, and other groups for a multitude of beneficial purposes.

The New Mexico Attorney General and the State Land Commissioner have determined that the only way to permit such exchanges is to amend the Enabling Act.

Amendment of the New Mexico Enabling Act requires the consent of the Congress and a State Constitutional Amendment.

S. 2597 would grant the consent of Congress to the amendment of the Enabling Act. It would permit the State of New Mexico to exchange State trust lands with the Federal Government, State agencies, city governments, Indian tribes, institutions for whom the lands are held in trust, and private entities.

Exchanges would be permitted only where: (1) the land that the State is to receive is of equal or greater value than the land that the State is to convey; and (2) the exchange is beneficial to the interests of the institution for whom the land is held in trust.

In order to assure that exchanges that have been conducted in good faith since 1910 are not invalidated, the bill makes the Enabling Act amendment retroactive to 1910.

The New Mexico State Legislature has already approved the Constitutional Amendment necessary to amend the Enabling Act. The Constitutional Amendment will be submitted to the voters for their ratification in November.

Mr. Chairman, this amendment to the New Mexico Enabling Act is long-overdue. I hope that the Committee will act on this bill quickly.

COCHITI LAND EXCHANGE ACT

Mr. Chairman, the Cochiti Land Exchange Act, S. 2521, would facilitate a land exchange and provide for a study of the possible Federal protection of a very unique area of New Mexico, known as Baca Location No. 1.

Baca Location No. 1, also known as Valle Grande, is a magnificent area west of Los Alamos, New Mexico. It is a valley created by a volcano that blew its top off. The volcano is estimated to have been 28,000 feet high. Ash from the explosion has been identified as far away as Kansas.

The valley, called a caldera, is about 20 miles in diameter and contains approximately 95,000 acres, all but 40 acres of which are owned by Dunigan Enterprises. It is home to a large variety of wildlife, and is truly one of the last large, unspoiled areas of New Mexico left in private hands.

In 1966, the Forest Service transferred 2,456 acres adjacent to Santo Domingo Pueblo, called the Cochiti properties, to the predecessor in interest of Dunigan Enterprises in exchange for 969 acres of Baca Location No. 1 that the Forest Service needed to construct a road.

Subsequently, Santo Domingo Pueblo, supported by the Department of the Interior, claimed 205 acres of the Cochiti properties under aboriginal rights, which if valid, would mean that the Forest Service had no right to transfer it to Dunigan Enterprises.

Eventually, the courts ruled in favor of the Santo Domingo Pueblo, divesting Dunigan Enterprises of title to a portion of the Cochiti properties that the Forest Service had transferred to them as part of the 1966 land exchange.

Dunigan Enterprises suffered a loss of approximately $1,634,000 because the Forest Service transferred land to which it did not have title. The Federal Government bears a particular responsibility for this loss. Not only did the Forest Service transfer land to Dunigan Enterprises to which it did not have title, but the Department of the Interior supported the Santo Domingo in their effort to divest Dunigan Enterprises of title to the Cochiti properties. It was a case of the Federal Government giving something with its right hand and taking it away with the left.

The Cochiti Land Exchange Act would:

1. Compensate Dunigan Enterprises for its losses from the Cochiti properties exchange by exchanging 36 acres of Dunigan Enterprises land in Baca Location No. 1, worth approximately $250,000, to the Forest Service in exchange for 1,700 acres of Forest Service land near Santo Domingo, worth approximately $808,000, and by paying Dunigan Enterprises $1,076,000 out of the permanent judgment fund;
2. Require Dunigan Enterprises to release all claims related to the Cochiti properties; and
3. Authorize a study of possible Federal protection of the remaining Dunigan Enterprises land in Baca Location No. 1.

Mr. Chairman, this legislation will allow the Federal Government to right a wrong that it committed many years ago and will allow the Federal Government to explore options for protecting one of the truly magnificent natural areas of New Mexico.

ENCHANTED NATIONAL FORESTS AND PREHISTORIC TRACKWAYS STUDIES

S. 2527, the Enchanted National Forests Information and Education Study Act, would direct the Forest Service to conduct a study on the need for a center to provide information on the National Forests in New Mexico and to expand the educational program for those forests.

The Prehistoric Trackways Study Act, S. 2684, would authorize the Department of the Interior to conduct a study of some exciting fossil trackways, which are approximately 280 million years old, that have recently been uncovered in the Robledo Mountains near Las Cruces, New Mexico. The Interior Department would evaluate the importance of these trackways and recommend ways to protect the fossils and the site where they were found.

Mr. Chairman, we have a number of witnesses from New Mexico here today and I look forward to hearing their testimony on these bills. After listening to their testimony, I am sure the Committee will agree with me that we should act on all four of these bills in a timely manner to obtain their enactment before the Congress adjourns for the year.

Senator BINGAMAN. Thank you very much.

Why do we not start with the administration witnesses from the Federal Government first: Mr. Jerry Rogers with the National Park Service, Associate Director; Mr. Jeff Sirmon, the Deputy Chief of the Forest Service; Mr. Dean Stepanek, who is the Deputy Director of the Bureau of Land Management, if they would please come forward.

Why do we not start with Mr. Rogers and take you in the order that I introduced you there? We appreciate your willingness to be here and give us the administration views on these various items of legislation. Go right ahead.

STATEMENT OF JERRY L. ROGERS, ASSOCIATE DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. ROGERS. Mr. Chairman, thank you. I am Jerry Rogers, Associate Director for Cultural Resources of the National Park Service. It is a pleasure to be with the subcommittee on any occasion.

As you have said, our formal statements are already a part of the record, so I can summarize ours in extreme brevity. We believe that the reconnaissance study that has been done of the sites associated with the Nez Perce National Historical Park relevant to S. 2804 is still not in a sufficient state of completion to allow the detailed kinds of decisions that are generally made about National Park System units, and thus it is our recommendation that action be deferred on S. 2804.

We have not finished the necessary review in which we expect to improve the feasibility and suitability aspects of that study. We are not yet able to provide reliable cost estimates. We are not yet able to provide reliable boundary recommendations for many of the sites associated with the proposal, and thus it is our recommendation that we defer.

I will be happy to attempt to answer questions, sir.

[The prepared statement of Mr. Rogers follows:]

PREPARED STATEMENT OF JERRY L. ROGERS, ASSOCIATE DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman, I appreciate this opportunity to provide your subcommittee with the views of the Department of the Interior on this legislation.

We recommend that the Congress defer action on S. 2804 at this time. A draft reconnaissance study of the significance and historical background of the sites designated in the bill has been done by our Regional Office, but review of the study is not complete, suitability and feasibility have not been determined, and cost estimates have not been prepared.

Nez Perce National Historical Park in Idaho was authorized by the Act of May 15, 1965. The park consists of 24 sites designated by the Secretary of the Interior which commemorate the history and culture of the Nez Perce Indian country. The park includes battlefields where Chief Joseph fought superior numbers of United States Army forces in 1877.

S. 2804 would amend the 1965 Act in five ways: (1) It permits designation of sites in five states other than Idaho; (2) it directs the Secretary of the Interior to designate an additional 13 specific sites in Washington, Idaho, Oregon, and Montana which are described in the Regional Office 1989 draft study; (3) it removes existing acreage limitations on the purchase of land and on the designation of land under the jurisdiction of other agencies; (4) it increases the appropriation authorizations for land acquisition by $1.5 million and for development by $5.2 million; and (5) it adds requirements that land owned by a state or political subdivision be acquired only by donation or exchange and that private lands may be purchased only on a willing seller basis.

Mr. Chairman, in 1969 the National Park Service investigated sites in Oregon as potential additions to this park, at the request of Members of the Oregon Congressional delegation. We note that two of those sites—Joseph Canyon Viewpoint and Old Chief Joseph's Grave—are among those to be added to the park by S. 2804.

At the request of Members of the Oregon Congressional delegation, the Regional Office formed a task force in 1987 to review the earlier study and prepare a report on the status of sites reviewed, and the suitability and feasibility of adding each site to the park. The resulting 1989 draft report identified 13 sites in Idaho, Montana, Oregon, and Washington that the Region found to be suitable for addition to the park. This report is the one referred to in section 2 of S. 2804.

The Region's draft report is now undergoing review and modification by the Regional Office. It has been approved by the Washington Office. Moreover, we have not developed estimates of the costs of implementing the provisions of the bill. The dollar amounts that would be authorized in the bill have not been verified. Accordingly, Mr. Chairman, while we agree that potential additions should be explored, action on the bill would be premature at this time.

This concludes my prepared remarks, Mr. Chairman.

Senator BINGAMAN. Senator McClure wanted to go ahead and ask a question at this point.

Senator MCCLURE. Mr. Chairman, we can dispose of the questions on this very quickly, and perhaps then leave it for the other three bills.

Mr. Rogers, I understand what you are saying. Are you at this time in a position to say whether or not any of the sites proposed are unsuitable?

Mr. ROGERS. I am not in a position to say that, Senator McClure, but I think that there are a couple of sites that the study implies that we should be cautious of. We cannot be certain that they are suitable.

Senator MCCLURE. Would you identify those sites, please?

Mr. ROGERS. I refer to the camp sites in the State of Washington where Chief Joseph camped late in his life. The study indicates that those sites, when they were examined, were covered with construction equipment and that one is bisected with a road. We just do not really know, at this point, whether we actually have a historic site there.

Senator MCCLURE. Can you tell the committee when you will have completed that review?

Mr. ROGERS. I regret that I cannot, Senator. I do not know the answer.

Senator MCCLURE. Is it a matter of weeks, months, or years?

Mr. ROGERS. Probably a matter of months.

Senator MCCLURE. I would urge you to expedite that, because we do want to move this bill if it is at all possible, and I intend to try to do that, and we can do that best with the advice that you can give us. So even if you cannot complete it, which I hope you can, by the time this committee has the opportunity to report the legislation, there is the opportunity, of course, during action in the House or in conference to refine—so I would urge you to make as much information available to us as you can at the earliest possible time.

Mr. ROGERS. We will do our very best, Senator McClure. I think that perhaps an appropriate suggestion at this point would be that the subcommittee might consider choosing language that authorizes, rather than specifies in great detail certain actions so that the Secretary could apply his judgment as the studies have been finished.

Senator MCCLURE. I understand that, and look forward to working with you on these questions. Thank you very much, Mr. Chairman.

Senator BINGAMAN. Thank you very much. Does that complete your testimony?

Mr. ROGERS. Yes, sir, it does.

Senator BINGAMAN. Are there any other questions? Perhaps we could allow Mr. Rogers to go about his other duties, if there are no other questions at this point.

Thank you very much for being here. We appreciate it. You are excused.

Mr. Sirmon, why do you not go right ahead?

STATEMENT OF JEFF M. SIRMON, DEPUTY CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. SIRMON. Thank you, Mr. Chairman. I appreciate this opportunity to express the Department's views on S. 2521 and S. 2527. The Department of Agriculture supports the purposes of S. 2521, but we suggest some technical and clarifying amendments.

We support the enactment of S. 2527. In regard to S. 2521, this provides for a land exchange in which the United States would receive 36 acres of private land owned by Dunigan Enterprises in exchange for 1,700 acres of national forest lands in Sandoval County, New Mexico. In addition, the United States would make a cash payment of approximately $1.1 million to Dunigan Enterprises. The lands received by the United States would be added to the Santa Fe National Forest.

The bill also provides for a cooperative land ownership adjustment study with the owners of Baca Location Number 1 to address its multiple-use attributes and to address options for its possible acquisition by the United States. You have described briefly the attributes of Baca Location Number 1.

We support the land ownership adjustment study. We suggest, however, that section 7 be amended to remove part C, which states that the study would not require an environmental impact study. The NEPA analysis required to develop an action proposal is best determined after review of the pertinent issues—the environmental impacts and the public input.

The bill would resolve a land title problem stemming from the 1966 land exchange which you have alluded to and described briefly. We have detailed attachments describing the situation in more detail, attached to my written statement.

As currently described, the land exchange is unequal in appraised value in favor of Dunigan Enterprises. The difference in the appraised value, along with the cash payment provided, would allow Dunigan Enterprises to recover its cost from a clouded title associated with the 1966 exchange. The conveyance of certain national forest lands is part of the compensation package proposed by S. 2521.

We agree that Dunigan Enterprises should be reasonably compensated for its cost. However, we feel that compensation should be provided entirely in cash payment. Compensation which provides national forest land in lieu of cash would set an undesirable precedent which would lead to national forest lands being used as compensation for future claims against the United States from a number of different unknown sources or directions.

Therefore, we suggest that the legislation be amended to provide compensation to Dunigan Enterprises entirely in cash. This would increase the cash payment to Dunigan Enterprises provided in section 4, and would decrease the national forest lands involved in the land exchange described in sections 2 and 3. If these suggested revisions are acceptable, then we will provide land descriptions and will work with Dunigan Enterprises.

We estimate the enactment of S. 2521 would result in a Federal cost of $1.3 million.

This completes my comments on S. 2521. I will go on to S. 2527 if it is okay.

Senator BINGAMAN. Maybe we could ask a couple of questions on S. 2521 before we go on, because I think those are the only two items we have here, and Mr. Stepanek is not testifying on this bill.

Do I understand that you would like to have the bill amended to just have a cash payment and not have any land exchanged?

Mr. SIRMON. There would be an equal value land exchange. We would cut back on the amount that was proposed in your bill and have equal value land exchange, and the rest of the compensation would be in cash.

Senator BINGAMAN. Have you discussed that with Dunigan Enterprises?

Mr. SIRMON. Yes, we have.

Senator BINGAMAN. In your understanding, is this something which would be amenable to them as a way to resolve this longstanding inequity?

Mr. SIRMON. It is my understanding that it would be satisfactory with them.

Senator BINGAMAN. The bill provides now for a 3-year study to look at the Baca—the Baca Grande area. Could you just comment as to whether that study requires 3 years or whether it could be done in a year or 2 years? I know there have been a lot of studies done in that area.

Mr. SIRMON. That is right, and this is the estimate of our people who will be responsible for making this study, and who have quite a bit of experience in dealing with matters of this magnitude, and the public interest involved. So it will take some time to sort these things out, even though a lot of studies have been made.

We could expedite this as much as possible. I am not in a position to say how much shorter that could be at this time. I could furnish that later.

Senator BINGAMAN. We would appreciate that.

Also, there has been a suggestion that the National Park Service also be involved in a study as a cooperative agency with yours. Do you see any problem with that?

Mr. SIRMON. I do not see any. In fact, the Park Service, the State, the BLM, other interests in that area would be involved. Whether or not they would be a principal in the study—we have situations similar to this as we do forest plans and other major studies, and so I would see the Forest Service taking the lead in this and cooperating with the National Park Service and using a lot of their data that they have had in the past as they studied items that would have a bearing on this.

Senator BINGAMAN. Let me ask if Senator Domenici has any questions related to this Cochiti Land Exchange Act.

Senator DOMENICI. I understand what you are recommending on an equal land exchange, and thus, some additional money. First, might I ask, is it fair to assume that this is supported by the Office of Management and Budget?

Mr. SIRMON. Yes, sir. Our statement is cleared through OMB.

Senator DOMENICI. So what will the difference in cash be between what is in the bill that we will have to appropriate?

Mr. SIRMON. We do not know exactly because we have not seen the statements from Dunigan Enterprises as to the cost that they incurred. We would need to work with Dunigan and get their statements as to the expenses incurred in this and reach some kind of an agreement.

Senator DOMENICI. In any event, we can assume when that occurs, that the administration would support both the land exchange and the difference in cash that would be paid to the Dunigans?

Mr. SIRMON. That is correct.

Senator DOMENICI. Are you prepared to draft this language for us and submit it so we might use your expertise?

Mr. SIRMON. Yes. We would be glad to, sir.

Senator DOMENICI. And how long do you think this would take?

Mr. SIRMON. The language on how we would handle this?

Senator DOMENICI. No, arrival at the final conclusion.

Mr. SIRMON. Well, we have not seen the figures and expenses, but I would hope we could do it within a matter of months. I might ask my staff if they have any information on this point.

I am advised that it would not take very long, a matter of a month or so.

Senator DOMENICI. So we might be able to have it done before we leave here this year?

Mr. SIRMON. Right.

Senator DOMENICI. Thank you, Mr. Chairman. I have no further questions.

Senator BINGAMAN. Why do not you go ahead and give your testimony on S. 2527, if you would?

Mr. SIRMON. We support S. 2527. It fits in very well with our environmental education program. It certainly strengthens and adds emphasis to our environmental education program in New Mexico.

The bill provides the opportunity to strengthen and expand our environmental education program. I think it would even help strengthen our overall national program. With 9 million acres of national forest lands in New Mexico, many opportunities are available for enhanced environmental education. There are excellent opportunities to involve the State and other Federal agencies who administer lands and resources in New Mexico in this effort.

The bill provides that the study examine the feasibility of locating an environmental center in New Mexico with Albuquerque as one of its alternative locations. Albuquerque, of course, is ideally located in the center of the State and in the area. It is the State's largest metropolitan area. It contains over one-third of the State's population. It has excellent opportunities for an environmental center in the Sandia Mountains and the nearby Cibola National Forest.

In addition, there are four other national forests in this State that are within a few hours driving and could also be included in this study.

So we are very supportive and think it would be an enhancement to the citizens of New Mexico as well as the Nation.

This concludes my testimony. I will be glad to elaborate.

[The prepared statement of Mr. Sirmon follows:]

PREPARED STATEMENT OF JEFF M. SIRMON, DEPUTY CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE, ON S. 2521, AND S. 2527

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to offer the Department of Agriculture's views on S. 2521, the "Cochiti Land Exchange Act of 1990," and S. 2527, the "Enchanted National Forest Information and Education Study Act of 1990."

The Department of Agriculture supports the purposes of S. 2521, but we suggest some technical and clarifying amendments. We support enactment of S. 2527.

While both bills deal with National Forest management in New Mexico, the objectives of each bill are different. Therefore, I will briefly address each bill separately and then will be happy to answer questions.

S. 2521, THE "COCHITI LAND EXCHANGE ACT OF 1990"

S. 2521 provides for a land exchange in which the United States would receive 36 acres of private land owned by Dunigan Enterprises in exchange for 1,700 acres of National Forest lands in Sandoval County, New Mexico. In addition, the United States would make a cash payment of approximately $1.1 million to Dunigan Enterprises. The lands received by the United States would be added to the Santa Fe National Forest.

The bill also provides for a cooperative land ownership adjustment study with the owners of Baca Location No. 1 (originally a large Spanish land grant) to address its multiple use attributes and to address options for its possible acquisition by the United States.

Baca Location No. 1 includes approximately 100,000 acres located within, and virtually surrounded by, the Santa Fe National Forest. It was the desire of Mr. Dunigan, now deceased, that the land grant be transferred to public ownership, rather than remain in private ownership and be subject to development. The area is very scenic and has outstanding wildlife and public recreation values. Therefore, we support the cooperative land ownership study. We suggest, however, that Section 7 be amended to remove part (c), which states that the study will not require an environmental impact statement. The NEPA analysis required to develop an action proposal is best determined after review of the pertinent issues, environmental impacts and public input.

S. 2521 would also resolve a land title problem stemming from a 1966 land exchange between Dunigan Enterprises and the United States. Details regarding the title problem are included in the Supplemental Statement attached to my written statement.

As currently described in S. 2521, the land exchange is unequal in appraised value in favor of Dunigan Enterprises. The difference in the appraised value, along with the cash payment provided, would allow Dunigan Enterprises to recover its costs from a clouded title associated with the 1966 exchange. The conveyance of certain National Forest land is part of the compensation package proposed by S. 2521.

We agree that Dunigan Enterprises should be reasonably compensated for its costs. However, we feel that the compensation should be provided entirely in a cash payment. Compensation which provides National Forest land in lieu of cash would set an undesirable precedent which could lead to National Forest lands being used as compensation in future claims against the United States.

Therefore, we suggest that the legislation be amended to provide compensation to Dunigan Enterprises entirely in cash (rather than partially in cash and partially in land). This would increase the cash payment to Dunigan Enterprises provided in Section 4 of S. 2521 and would decrease the National Forest land involved in the land exchange described in Sections 2 and 3. If these suggested revisions are acceptable, the Forest Service will provide new land descriptions and other pertinent information after discussions with representatives of Dunigan Enterprises.

We estimate that enactment of S. 2521 would result in a Federal cost of $1.3 million. Most of this cost ($1.1 million) is the cash payment to Dunigan Enterprises. The remaining $200,000 would be needed by the Forest Service over the FY 91-93 period to complete the land ownership adjustment study. We have not validated the cash compensation of $1.1 million in Section 4, so can offer no opinion on the amount. If the $1.1 million compensation figure is correct, the total cost of the bill, after including the suggested amendments, is estimated at $1.9 million. In the amended bill, the cost of the landownership adjustment study would remain at $200,000, but the cash compensation cost would increase.

This completes my comments on S. 2521.

S. 2527, THE "ENCHANTED NATIONAL FOREST INFORMATION AND EDUCATION STUDY ACT OF 1990"

We support this bill which would significantly strengthen and expand environmental education in New Mexico. The diverse lands of the five National Forests in New Mexico would provide an ideal learning environment for residents and visitors.

In the past 20 years, the American public has taken a more active role in understanding their environment and the problems of using and protecting natural resources. During that period, the Forest Service has been a leader in developing environmental education programs for schools and communities. We believe these programs have been important in developing individual understanding of resource issues. They have also involved people in problem-solving strategies which value resources and serve people.

We agree that the Federal Government should take a more active role in supporting and encouraging environmental education programs and activities. In October 1989, responding to recommendations to President Bush from a coalition of environmental groups and, at the urging of the National Association of State Foresters, the Forest Service began to look at ways to further strengthen our environmental education program which focuses on forestry resource education. We recognize the need to devote greater resources to our environmental education programs, some of which were pioneering efforts in the field. We have met recently with the National Association of State Foresters, Project Learning Tree, and the National Arbor Day Foundation to consider ways of forging stronger partnerships in environmental education. The Chief has established a National Resource Education Task Force to direct further strengthening of Forest Service environmental education.

This bill provides the opportunity to strengthen and expand our environmental education program in New Mexico. That will, in turn, strengthen our overall National program. With over 9 million acres of National Forest System lands in New Mexico, many opportunities are available to enhance environmental education. There are also excellent opportunities to involve State and other Federal agencies who administer lands and resources in New Mexico in this effort.

S. 2527 provides that the study examine the feasibility of locating an environmental education center in New Mexico, with Albuquerque as one of the alternative locations. Albuquerque is ideally located in the center of the State and region. As the State's largest metropolitan area, it contains over one-third of the state's population. It is particularly important to reach this large group of urban citizens and help them learn about resource issues of local, regional, and national significance. An environmental education center in this area could provide focus to the regional environmental education program and could provide materials and service to schools, colleges, and community organizations. The Sandia Mountains of the Cibola National Forest rise immediately above the city and provide opportunities for learning in an outdoor environment in close proximity to the city. In addition, four other National Forests and a National Grassland are within a few hours drive of the city. If S. 2527 is enacted, the study will explore the possibilities for developing a coordinated environmental education program for Albuquerque, and the entire region.

This concludes my testimony. I will be pleased to answer any questions you may have.

SUPPLEMENTAL STATEMENT OF THE DEPARTMENT OF AGRICULTURE, ON S. 2521

In 1966, the United States received 969 acres of the Baca Location No. 1 from Dunigan Enterprises in exchange for 2,456 acres of National Forest land adjacent to the Santa Domingo Pueblo. The boundary of the parcel transferred from the United States to Dunigan Enterprises was not fenced on the property line adjacent to the Pueblo, rather it was fenced to avoid a large arroyo (isolating approximately 200 acres from the remainder of the tract). Prior to finalizing the exchange, the Santa Fe National Forest Supervisor properly notified the Santa Domingo Pueblo that the exchange was imminent and that the new owner would likely fence the property line. No response was received from the Pueblo, and the exchange was completed.

Several years later, Dunigan Enterprises leased a portion of this property to Colony Minerals Company, who fenced the boundary with the Pueblo. This action was contested by the Pueblo, because they had used the unfenced land for grazing and they claimed the land. The Pueblo tore down the fence and threatened Colony Minerals with trespass action if they occupied the tract. The Department of Interior (Bureau of Indian Affairs) recommended that the Department of Justice defend the Indian claim.

Colony Minerals Company filed suit against Dunigan Enterprises because of the faulty title. This required Dunigan Enterprises to file a quiet title action against the United States to clear the title. The quiet title action was dismissed, because the suit was not filed within the statute of limitations (12 years) and the merits of the Native American claim were never determined.

As a result, Dunigan Enterprises was compelled to settle claims with the Pueblo and clear the title. The negotiated settlement gave the Santa Domingo Pueblo title to 557 acres of the original 2,456-acre parcel. In return, the Pueblo renounced claims to the remaining 1,899 acres. Dunigan Enterprises also paid substantial court costs and legal fees.

The costs incurred for the land which was lost, the court costs, and the legal fees provide the basis for the compensation in H.R. 4630. Since the statute of limitations has expired, legislation is the only remedy for Dunigan Enterprises to recover its costs.

Senator BINGAMAN. I have one question on this particular bill. Again, I do not believe that Mr. Stepanek is going to testify on this, so let me go ahead and ask this question now.

Could you tell us anything more about the type of education programs that the Forest Service is thinking of being able to offer through this type of a center? Or do you have enough experience around the country to have a clear fix on what types of educational programs you do offer and what groups they are targeted at?

Mr. SIRMON. Yes, Mr. Chairman. We have a number of programs operating throughout the United States. And I think we could offer up a variety of alternatives and situations which would fit the situation in New Mexico.

I am personally familiar with the environmental center that I was closely associated with in Utah. It was subscribed to by elementary school grades 51 weeks out of the year. And it was tied in very closely with the school district, the school administration. This one, particularly, was financed by the education community. We have other examples where we educate faculty and staff and schoolteachers to do environmental education and help develop packets for environmental education. We are tied in with Project Learning Tree and other environmental programs. So I am confident that we can describe an exciting program as we conduct this study. It would bring honor to the people of New Mexico.

Senator BINGAMAN. That is all I had on this particular bill.

Did you have any questions, Senator Domenici, on this S. 2527?

Senator DOMENICI. Mr. Chairman, I have no questions. I am very pleased that the administration is wholeheartedly supporting it. I am delighted to be a co-sponsor and hope we can expedite its passage. I think it just permits us to make better use of the expertise that is in the Government and of the force for the people at large.

Senator BINGAMAN. Does that conclude the testimony you planned to give?

Mr. SIRMON. Yes.

Senator BINGAMAN. I believe that is all we need to bother you.

[Subsequent to the hearing the Department of Agriculture submitted the following:]

United States Department of Agriculture | **Forest Service** | **Washington Office**

14th & Independence SW
P.O. Box 96090
Washington, DC 20090-6090

Reply To: 1510

Date: AUG 15 1990

The Honorable Dale Bumpers
Chairman, Subcommittee on Public Lands,
National Parks and Forests
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The enclosed information is provided in response to questions asked of Deputy Chief Jeff Sirmon at the July 27 hearing of the Subcommittee concerning S. 2521, the "Cochiti Land Exchange Act of 1990." These questions required additional information not available at the hearing.

Please let us know if you need additional information.

Sincerely,

F. DALE ROBERTSON
Chief

Enclosure

USDA FOREST SERVICE RESPONSE TO QUESTIONS CONCERNING S. 2521, THE "COCHITI LAND EXCHANGE ACT OF 1990"

Question 1: Can the length of time needed for the land adjustment study be reduced from the three-year period currently in the bill, particularly since much information has already been gathered about the Baca Location No. 1?

We believe that the study could be completed in 2 years, provided the funds are made available as outlined in our testimony on July 27, 1990. In that testimony, we indicated that the study would cost approximately $200,000 for a reasonable analysis of the options.

The schedule and the cost are somewhat dependent on the type of study that is envisioned by Congress. A very intensive study, with a wide array of management alternatives would be more expensive and would require more time. Similarly, the degree of public interest/controversy will affect the schedule.

Assuming that a reasonable analysis of the options is envisioned, using mostly existing information, the study could be completed in 2 years. At least one field season will be needed to allow gathering of any information not currently available.

Question 2: What is estimated to be the cost of acquiring the Baca Location No. 1 if the entire tract is purchased?

Two concurrent, but independent, appraisal efforts were made in 1979-1980 to estimate this cost. A Forest Service appraisal completed in 1980 concluded a total value of $28.8 million. This appraisal was completed by Thomas Gillentine and reviewed by Review Appraisers Tom Seiger (Region 3) and Carl Coates (Forest Service Washington Office). We understand that an independent appraisal by Dunigan Enterprises at approximately the same time concluded a total value of $50.0 million.

Based on this 1979-1980 information, we estimate the current value of the property is in the range of $40 to $60 million. This would need to be be verified with updated appraisals.

Question 3: Can the Forest Service provide bill drafting service to make the changes in the land exchange outlined in the Forest Service testimony and can this information be provided in an expeditious timeframe?

Yes, a technical bill drafting service will be provided. We expect to provide a draft bill to the subcommittee by early September 1990.

United States Department of Agriculture
Forest Service
Washington Office
14th & Independence SW
P.O. Box 96090
Washington, DC 20090-6090

Reply To: 1510

Date: SEP 05 1990

The Honorable Dale Bumpers
Chairman, Subcommittee on Public Lands,
  National Parks, and Forests
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We are pleased to submit the enclosed draft bill in response to the Subcommittee request for drafting service at the July 27 hearing on S. 2521, "The Cochiti Land Exchange Act of 1990." The draft bill includes the amendments recommended in our testimony at that hearing. Copies have also been provided to Senators Domenici and Bingaman of New Mexico.

S. 2521 provided that the United States would exchange 1700 acres of National Forest Land valued at $500 per acre to Dunigan Enterprises. The amended exchange presented here involves only 500 acres of National Forest land. Therefore, the difference is $600,000 (1200 acres x $500/acre). That difference will need to be considered in calculating the cash compensation to Dunigan Enterprises. We do not have records to establish the total compensation figure. Dunigan Enterprises will need to provide you the appropriate information.

Please contact us if you have questions or require additional information.

Sincerely,

Jeff M. Sirmon
F. DALE ROBERTSON
For Chief

Enclosure

UNITED STATES DEPARTMENT OF AGRICULTURE
RECOMMENDED AMENDMENTS TO S. 2521

(Delete material in brackets. Insert underlined materials)

A BILL

To exchange certain lands in the State of New Mexico and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Cochiti Land Exchange Act of 1990".

SECTION 2. PURPOSES AND DEFINITIONS.

(a) Purposes.--The purposes of this Act are--

(1) to provide for the exchange of certain lands of Dunigan Enterprises and the United States; and

(2) to compensate Dunigan Enterprises for costs incurred as a result of federal actions adversely affecting the title to its lands; and

(3) to provide for a study of the possible Federal protection of certain lands in New Mexico.

(b) Definitions.--For the purposes of this Act--

(1) the term "Dunigan Enterprises" means Dunigan Enterprises, Incorporated, a Texas corporation, and BL&C Co. and BL&C Co. No. 2, Texas partnerships; and

(2) the term "Secretary" means the Secretary of Agriculture.

SECTION [2] 3. LAND EXCHANGE.

(a) Exercise of Option.--

(1) Notwithstanding any other law, upon receipt by the Secretary of an option from Dunigan Enterprises in which Dunigan Enterprises offers to convey the lands described in section [3a] 4(a) to the United States in exchange for the lands of the United States described in section [3(b)] 4(c), the Secretary shall exercise the option.

(2) The Secretary shall exchange and convey to Dunigan Enterprises the lands described in section [3(b)] 4(c) upon--

(A) conveyance to the United States of the lands described in section [3(a)] 4(a) by Dunigan Enterprises and acceptance of title to that land by the Secretary; and

(B) the execution by Dunigan Enterprises of a release of all claims relating to the real property known as the "Cochiti properties" located in Sandoval County, New Mexico.

(b) Terms and Conditions.--(1) All conveyances shall be by general warranty deeds and shall convey all right, title, and interest in and to the described lands.

(2) Nothing in this subsection shall preclude such other terms and conditions on the conveyances of lands or interests therein as the Secretary and Dunigan Enterprises may agree upon.

(c) Good Title.--For purposes of confirming good and merchantable title, all right, title, and interest in and to the lands described in subsection [3(b)] (4b) are confirmed to be in the United States and under the jurisdiction of the Secretary of Agriculture. The United States shall defend such title against any and all claims.

SECTION [3] 4. LAND DESCRIPTIONS.

(a) Lands of Dunigan Enterprises.--The lands of Dunigan Enterprises available for conveyance to the United States are the lands situated in the State of New Mexico aggregating approximately 36 acres and described as follows:

New Mexico Principal Meridian, Sandoval County, Township 19 North, Range 3 East: The portions of the Spanish land grant surveyed and known as Baca Location No. 1 described as follows:

(1) Parcel 1.--Beginning at Mile Point No. 11 on the south boundary of Baca Location No. 1; thence westerly along the south boundary of Baca Location No. 1 to its intersection with the constructed centerline of Forest Development Road 133; thence on a continuation of the south boundary of Baca Location No. 1, 33 feet; thence on an approximate bearing of N. 26° E., about 720 feet as scaled from the Forest Service's topographic map of the area, to the south boundary of the easement for New Mexico State Highway No. 4; thence in an easterly direction along the State highway easement to its intersection with the south boundary of Baca Location No. 1; thence westerly along the south boundary of Baca Location No. 1 to the point of beginning, being Mile Point No. 11, containing about 27 acres, subject to confirmation by formal survey and acceptable plat required to provide an acceptable legal description and record acreage.

(2) Parcel 2.--Beginning at Mile Point No. 10 on the south boundary of Baca Location No. 1; thence in a westerly direction along the south boundary of Baca Location No. 1, 423 feet to a point on the west side of the east fork of the Rio Jemez; thence N. 38° E., 660

feet; thence N. 86° E., 170 feet; thence S. 70° E., 477 feet; thence S. 34° E., 364 feet to the south boundary of Baca Location No. 1; thence along the south boundary of Baca Location No. 1 to the point of beginning, being Mile Point No. 10, containing approximately 9 acres, subject to confirmation by formal survey and acceptable plat required to provide an acceptable legal description and record acreage.

(b) Lands of the United States.--National Forest lands [available for conveyance to Dunigan Enterprises are all of the land situated in the State of New Mexico] situated in the State of New Mexico, title to which is confirmed in the United States by this Act, are described as follows:

(1) New Mexico Principal Meridian, Sandoval County, Township 15 North, Range 6 East:

(A) Sec. 10. The portion of lot 1 lying northeast of the Dunigan Tract as described at volume 21, pages 361-363 of the Sandoval County records.

(B) Sec. 11. Lots 1, 2, and 3 and the portion of lots 4 and 5 and the N 1/2SW 1/4, and SE 1/4 lying northeast of the Dunigan Tract as described in volume 21, pages 361-363 of the Sandoval County records.

(C) Sec. 12. Lots 1, 2, 3, and 4, S 1/2 .

(D) Sec. 13. Lots 1, 2, 3, and 4, NE 1/4[,]NW 1/4, N 1/2[, and]NE 1/4.

(E) Sec. 14. The portion of lots 1 and 2 lying northeast of the Dunigan Tract as described in volume 21, pages 361-363 of the Sandoval County records.

(2) New Mexico Principal Meridian, Santa Fe County, Township 15 North, Range 7 East:

(A) Sec. 7. Lots 1, 2, 3, and 4, S 1/2 [and]S 1/2.

(B) Sec. 8. Lots 8 and 9.

(C) Sec. 17. Lots 2, 3, 6, and 7.

(D) Sec. 18. Lots 1, 2, 5, and 6, N 1/2[,]N 1/2, N 1/2[, and]SE 1/4,

containing approximately 1,700 acres, subject to easements and rights-of-way of record.

(c) Lands of the United States. -- National Forest lands situated in the State of New Mexico, and available for conveyance to Dunigan Enterprises, are described as follows:

(1) New Mexico Principal Meridian, Sandoval County, Township 15 North, Range 6 East:

(A) Sec. 10. That portion of Lot 1 lying northeasterly of the 2456.14-acre property described in the Quitclaim Deed to the Baca Land and Cattle Company, et. al., on September 23, 1966, as recorded in Vol. 21, pp. 361-363 of the Sandoval County records;

(B) Sec. 11. Lots 1, 2, 3 and that portion of Lots 4 and 5 and the N1/2SW1/4 and SE1/4 lying northeasterly of the 2456.14-acre property described in the aforesaid Quitclaim Deed of September 23, 1966, to Baca Land and Cattle Company, et al.

(C) Sec. 12. Lot 4 and a portion of Lot 3 and the SW1/4;

(D) Sec. 13. Lot 1, a portion of Lot 2, and a portion of NE1/4NW1/4;

(E) Sec. 14. Lot 1 and that portion of Lot 2 lying northeasterly of the 2456.14-acre property described in the aforesaid Quitclaim Deed of September 23, 1966, to Baca Land and Cattle Company, et al;

And more particularly described as follows:

BEGINNING at a point identified as the 4 1/2 Mile Post on the south boundary of the La Majada Grant as shown on the supplemental plat approved August 23, 1926, by the General Land Office (G.L.O.);

thence, S. 74°00'E. along the above described south boundary line about 2,088 feet to the southeast corner of the herein described tract;

thence, N. 0°01'W. about 4,785 feet to the northeast corner of the herein described tract and being a point on the south boundary of the Santa Cruz Spring Tract as shown on the survey plat approved by the Chief Cadastral Surveyor of New Mexico on July 8, 1985;

thence, N. 87°54'W. about 310 feet to Mile Post 4 on the south boundary of the Santa Cruz Spring Tract as shown on the said 1985 plat;

thence, N. 87°56'W., a distance of 5,281.98 feet (record 80.03 chains) to Mile Post 3 on the south boundary of the Santa Cruz Spring Tract as shown on the said 1985 plat;

thence, continuing N. 87°56'W. a distance of 1,506.12 feet (record 22.82 chains) to the southwestern-most corner of the Santa Cruz Spring Tract as shown on the aforesaid 1985 plat and also being a point on the northeasterly boundary of the New Mexico State Highway 22 right-of-way; thence, continuing N. 87°56' W., about 145 feet across said highway to a point on the southwesterly highway right-of-way boundary, also being a point on the northeasterly boundary of the 2,456.14-acre property described in the Quitclaim Deed from the United States of America to the Baca Land and Cattle Company, et. al., dated September 23, 1966, recorded in Volume 21 pages 361 to 363 of the Sandoval County records;

thence, S. 43°50'E. along the northeasterly boundary of the said 2456.14-acre property a distance of about 4153 feet;

thence, continuing along the northeasterly boundary of the said 2456.14-acre property S. 49°35'E. a distance of 1607.10 feet (record 24.35 chains in the Quitclaim Deed) to the southwest corner of the herein described tract and also being the southeast corner of the said 2456.14-acre property, and being a point on the south boundary of the La Majada Grant as shown on the said G.L.O. supplemental plat approved August 23, 1926;

thence, S. 73°48'E. a distance of 1199.88 feet (record 18.18 chains in the Quitclaim Deed) to the 4 1/2 Mile Post on the south boundary of the said La Majada Grant to the POINT OF BEGINNING,

containing approximately 500 acres, subject to confirmation by survey, and subject to easements and rights of way of record.

(d) Corrections.--The Secretary and Dunigan Enterprises may by agreement correct any errors in the legal descriptions made in this Act or may modify the descriptions to conform with subsequent surveys.

SECTION [4. ADDITIONAL] 5. COMPENSATION.

[In addition to the conveyance of land to Dunigan Enterprises under Section 2] In compensation for costs incurred as a result of federal actions adversely affecting the title to its lands, there shall be paid to Dunigan Enterprises the sum of [$1,075,527] $_________ from the permanent judgment appropriation, on certification by the Secretary to the Comptroller General that the land conveyances and release described in section [2(a)(2)] 3(a) have been completed.

SECTION [5] 6. DISPOSITION OF LANDS.

Lands conveyed to the United States pursuant to this Act shall become part of the Santa Fe National Forest and shall be administered by the Secretary pursuant to the Act of March 1, 1911 (36 Stat. 961).

SECTION [6] 7. CONSUMMATION OF TRANSACTION.

It is the intent of the Congress that the conveyances authorized in section [2] 3 shall be made within 1 year after the date of enactment of this Act.

SECTION [7] 8. LAND OWNERSHIP ADJUSTMENT STUDY.

(a) Study.--The Secretary shall conduct a study of Baca Location No. 1 to address--

(1) the scenic, geologic, recreational, timber, mineral, grazing, and other multiple use attributes of Baca Location No. 1; and

(2) options for acquisition of Baca Location No. 1 by the United States, in whole or part, by purchase, exchange, donation, or otherwise, including the estimated cost of each option.

(b) Cooperation.--

(1) The study required by subsection (a) shall be conducted by the Secretary, in cooperation with the owners of Baca Location No. 1, the National Park Service, the U.S. Fish and Wildlife Service, other interested parties, and the general public.

(2) This Act does not authorize entry upon Baca Location No. 1 by any person without the express permission of the landowner, and the Secretary shall make prior arrangements with the landowner for satisfactory access to the land for purposes of this section.

[(c) Environmental Impact. -- The study required by subsection (a) shall not require preparation of an environmental impact statement.]

[(d)] (c) Report.--The Secretary shall report the results of the study required by subsection (a) and any recommendations for legislation not later than 3 full fiscal years after the date of enactment of this Act to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives.

[(e)] (d) Authorization of Appropriations.--There are authorized to be appropriated such funds as are necessary for the study required by subsection (a).

Mr. Stepanek, why do not you go ahead.

We have a roll call vote that has started, but I am informed there are two roll call votes back to back. So I think what I will do is to ask you to speak for 8 or 9 minutes, and then probably have to adjourn so that we can go vote on those two, and then come back.

STATEMENT OF DEAN STEPANEK, DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Mr. **Stepanek**. Thank you. I will be very brief in that regard.

Let me say, with respect to S. 2597, that we certainly favor enactment. I personally feel that we have had a very productive exchange program, a very active program, with the State of New Mexico. And to the extent that this legislation ratifies past exchanges, to the extent that we can then proceed knowing that future exchanges will be legally in good standing, we favor enactment.

I have no other comment on that bill.

Senator **Bingaman**. Did you have questions on that, Senator Domenici, on the enabling act legislation?

Senator **Domenici**. I have none.

Senator **Bingaman**. Why do not you go ahead with your comments on the fossil trackways study, if you would?

Mr. **Stepanek**. You have a witness later in the morning who can speak to what is actually happening on the ground, when Jerry comes up.

Let me say that we are very supportive of the proposal contained in this bill. It is my belief that this area warrants national recognition and BLM is eager to get on with the requisite studies, get those completed and come back to you with our report and recommendations.

One aspect of the bill, the way it is now proposed, suggests that there be withdrawn 40 acres. It seems to us that there is a larger area that we need be concerned with. And we would suggest, as I have indicated in my statement, that a larger area be considered for withdrawal.

Senator **Bingaman**. Do you have a specific amount of land that you think is the appropriate amount?

Mr. **Stepanek**. That amount, to the best it has been described at this point, would be 736 acres. That is largely because we really do not know the extent of the resource there, in view of the protections necessary, until we discover what is actually involved.

I have nothing further on this bill.

[The prepared statements of Mr. Stepanek follow:]

Prepared Statement of Dean Stepanek, Deputy Director, Bureau of Land Management, Department of the Interior, on S. 2597

I appreciate the opportunity to appear here today to discuss S. 2597, a bill designed to clarify the authority of the New Mexico State Land Commissioner of public lands to exchange school trust lands.

We favor enactment of S. 2597.

The bill would amend the States enabling Act to resolve a confusing legal issue regarding the State's authority and ability to exchange school lands. Over the years, the Bureau of Land Management (BLM) and the New Mexico State Land Commissioner have effected a number of fair market value exchanges. These exchanges have been as diverse as settling land claims involving the White Sands Missile Range, acquiring State lands within wilderness areas and the El Malpais National

Conservation Area, and consolidating BLM and State lands for better resource management.

Recently, court decisions in Arizona have raised the question of whether the State's enabling act contains authority for the State to make exchanges such as I just described. Because Arizona and New Mexico have similar enabling acts, the exchanges New Mexico has made may be in doubt.

If S. 2597 becomes law, and the people of New Mexico consent to it by amendment of the Constitution of the State of New Mexico, S. 2597 would become effective retroactively as of June 20, 1910. This would result in the approval, validation and ratification of all exchanges made after that date of lands granted or confirmed to the State of New Mexico.

This completes my prepared statement. I will be pleased to answer questions.

PREPARED STATEMENT OF DEAN STEPANEK, DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON S. 2684

I appreciate the opportunity to appear here today to discuss S. 2684, a bill that would authorize a study of methods to protect and interpret the nationally significant fossil trackways found in Robledo Mountains near Las Cruces, New Mexico. These trackways are on land administered by the Bureau of Land Management (BLM), in our Mimbres Resource Area.

We support enactment of S. 2684 but suggest some amendments which we believe will strengthen the bill and provide additional protection for this invaluable resource.

The trackways are estimated to be 280 million years old. These are vertebrate fossils that range from small lizard-like reptiles to large prints made by 5-foot-long sprawling quadrupeds. Among the numerous plant fossils are branches of primitive conifers that are more than 5 feet long. The trackways are believed to be some of the most outstanding ever discovered.

The paleo excavation is being conducted by Jerry MacDonald, a New Mexico State University student working on a Ph.D. in Sociology under a permit issued by the BLM. The project is being sponsored by the Smithsonian Institution, the Carnegie Museum of Natural History in Pittsburgh and the Los Angeles County Museum of Natural History. The BLM has provided some support to the research effort. Dona Ana County provides laboratory space at Southern New Mexico Fairgrounds for storage and analysis of the excavated trackways under an agreement with the BLM.

The BLM is ready to begin more extensive studies which will provide a basis for permanent protection, management and curation of the Trackways.

We also suggest that the temporary withdrawal provided by Section 3(a) be expanded from 40 to 736 acres to include areas where surveys have identified trackway sites.

In the Resource Management Plan now being developed for the Mimbres Resource Area we plan to designate and manage the area to be withdrawn by the bill as an area of critical environmental concern until Congress acts on any recommendations of the study required by section 4 of the bill.

We will be happy to work with committee staff on these suggested amendments.

This concludes my prepared statement. I will be pleased to answer questions.

Senator BINGAMAN. Let me ask you a few questions on this trackways legislation. Could you just give me a very brief description of the potential designations that are available to protect an area like this if the study came through and demonstrated that the protection was merited and we should go ahead? What are the options that you would be able to cite?

Mr. STEPANEK. Certainly there is a range of options. One thing that we will do in any event, in our planning process, would be to designate this as an area of critical environmental concern. That has the effect, if you will, of flagging for future management purposes that this is an area we must be concerned with before we permit uses of the area.

Senator BINGAMAN. That is internal in the sense that it does not affect outsiders, but it does, for purposes of your internal management, it is a clear indication that you want to treat it in some sort of special way. Is that correct?

Mr. **Stepanek**. That is correct, yes. And we are confident at this point that that is the very least. Beyond that, it is necessary to look at our ability, if you will, to withdraw from entry or from disposal lands that would be contained within the studied area. I know of no other good way to do that than through some withdrawal mechanism. We could be talking about a national conservation area, for instance. We could simply be talking about recognizing this as a significant area, have a withdrawal on the land so that other than for valid and existing rights, the lands could not be transferred out of Federal ownership nor could new mining claims be staked—those kinds of things.

Senator **Bingaman**. I think we contemplate here a 2-year study. In your view, is that much time required in order to do a competent study?

Mr. **Stepanek**. I have been advised that we could do it in less than that. I was thinking more along the lines of 1 year.

Senator **Bingaman**. I see. So that kind of a change would certainly be acceptable to you.

Are there areas of the country that are currently being managed for their paleontological resources similar to what we are talking about or envisioning in this legislation?

Mr. **Stepanek**. I do not know that there is another area that is quite as dramatic in the way that this area is in terms of the period of history that we are talking about. There are other areas where BLM is involved, such as the Cleveland Lloyd Quarry in Utah; those are vertebrate fossils. And, of course, Dinosaur National Park is a good example. There are other areas, such as up in Montana where we found fossilized dinosaur eggs.

So what sets this apart to me is the fact that it is really unique. It heretofore has not been focused on or discovered for that matter.

Senator **Bingaman**. Let me just ask Senator Domenici, did you have a question or two before we run and vote or would you want to come back and ask questions?

Senator **Domenici**. Mr. Chairman, I am very pleased with his testimony and with the bill. I wonder if I might say again to the New Mexicans, I am going to drop by Appropriations. I hope we can get finished so that I will have a chance to return before you complete the hearing on the enabling legislation.

I have no further questions.

Senator **Bingaman**. I think that completes my questions of you, Mr. Stepanek. Thank you very much for being here.

We will start up again in about 10 minutes, first with Bill Humphries, the Commissioner of Public Lands from New Mexico, and then the final panel of witnesses on these bills at that time.

We will stand in recess for about 10 minutes.

[Recess.]

Senator **Bingaman**. Let us start up again.

We are going to revise the order a little bit here. Senator Domenici would like to be present when our Commissioner of Lands testifies and we want to accommodate that.

So what I would like to do at this point is to bring forward the two witnesses who are going to testify on the Cochiti Land Exchange bill, Mr. Andy Dunigan and Mr. Henry Oat and have them give their testimony. Then we will determine at that point whether to go ahead and hear the testimony on the fossil trackways study or do the enabling act.

If Mr. Dunigan and Mr. Oat would come forward, please.

I apologize for the switch in signals, but that is sort of the way business is done around here, I regret to say.

Mr. Dunigan, why do not you go ahead and give your testimony and then Mr. Oat? Then I will ask a few questions.

STATEMENT OF ANDY DUNIGAN, THE DUNIGAN COMPANIES, SANTA FE, NM

Mr. DUNIGAN. Mr. Chairman, thank you for allowing me to testify before the subcommittee today.

My name is Andrew Dunigan of Santa Fe, New Mexico. My presence here today is the result of a land swap that my late father, Pat Dunigan, made in 1966 at the behest of the United States Forest Service for land in New Mexico. Due to the actions of the Federal Government since September 1966, my family and its businesses have been deprived of its benefit, use and enjoyment of much of this land it received in the exchange with the Forest Service without any compensation or other recourse.

The Dunigan family has always been a good neighbor in New Mexico and has worked with the Federal Government on many occasions to assist it in its endeavors in that State. However, as a result of the land exchange that took place in 1966, the family has been paralyzed because one agency of the Federal Government took away what another agency of the Federal Government gave.

We have been trapped between interagency quarreling. This unenviable position has made the Dunigan family and the Dunigan companies true victims. S. 2521, the Cochiti Land Exchange Act of 1990, introduced by Senators Bingaman and Domenici on April 25 of this year, will rectify this situation.

Mr. Chairman, if I may I would like to give some background of the land exchange that occurred in 1966 and the events following that exchange that have brought us to S. 2521. The events that have occurred since 1966 are riddled with factual and legal complexities. And for the benefit of the members of the committee and their staff, I have submitted a brief chronology of these events and some important supporting documentation. This material will support and explain in detail the events that are the subject of my testimony.

Senator Bingaman, as you are fully aware, since 1966 when we entered into this transaction with the Federal Government, my family has been involved in protracted litigation which led to a very unfavorable settlement in 1985. And subsequently, we have had to forestall any further legal action because of the expense that would entail.

We decided to take the legislative route to rectify this injustice, and over the last 3 years have discussed this issue with you and other members of the New Mexico delegation in hopes of finding a legislative solution to it.

As I pointed out earlier, I have submitted a chronology of the events that have occurred since 1966, so I do not feel at this point it is necessary to go into those in any detail. However, I would like to point out some of the provisions in the bill and give you our position on them.

With the support and the encouragement of the Forest Service, S. 2521 will rectify these past wrongs. The bill, as you know, contains three components. First, an exchange where 37 acres of the Baca location are given to the U.S. Government for a block of 1,600 acres next to the land that the Forest Service originally deeded to my father. Dunigan will net approximately $500,000 in this unequal exchange.

A study by the Forest Service is authorized for the Baca Location Number 1. It is vital to the region and to the Dunigan family in order to have sufficient data in order to make decisions on the Baca's future. A cash payment of $1,075,527 in order to compensate Dunigan for its foregone proceedings from the lost sale to Colony Materials and its various legal and miscellaneous expenses over the past decade. I am testifying to the provisions as currently represented in the bill. As noted previously, the Forest Service has proposed adjustments to these figures, which have in turn been approved by the Office of Management and Budget.

Section 7 of S. 2521 authorizes the United States Government to survey and examine lands in the Baca Location Number 1. This unique property is an area of important historical, geological significance and unmolested natural beauty. The Valles Caldera, the summit of an enormous collapsed volcano, is located on the Baca property.

From the very beginning, the Dunigan family has been in a very precarious position with no apparent remedy. Its original deal with one department of the Federal Government, the Forest Service, was ultimately reneged on by another department of the Federal Government, the Department of the Interior. The Dunigan family was treated unfairly by the Federal Government, albeit by different agencies.

The 1966 land exchange was a valid arm's-length transaction for equal value. The Forest Service and the Dunigan family completed and agreed up the exchange in good faith. Subsequently, the U.S. Government, by a different agency representing Indian interests, pursued a course to defeat the same land title conveyed by the United States.

The Dunigan family certainly has no hard feelings toward the Pueblo. The actions by the Federal Government, not those of the Pueblo, brought us to the current situation.

Mr. Chairman, I urge you and members of the committee to support S. 2521 in order to rectify the inequity suffered by my family over the past decade.

Thank you.

[The prepared statement of Mr. Dunigan follows:]

PREPARED STATEMENT OF ANDY DUNIGAN, THE DUNIGAN COMPANIES, SANTA FE, NM

Mr. Chairman: Thank you for allowing me to testify before the Subcommittee today. My name is Andy Dunigan of Santa Fe, New Mexico. My presence here today is the result of a land swap that my late father, Pat Dunigan, made in 1966, at the behest of the United States Forest Service for land in New Mexico. Due to the actions of the Federal Government since September, 1966, my family and its businesses have been deprived of its benefit, use and enjoyment of much of this land it received in the exchange with the Forest Service without any compensation or other recourse. The Dunigan family has always been a good neighbor in New Mexico and has worked with the Federal Government on many occasions to assist it in its endeavors in New Mexico. However, as a result of the land exchange that took place in 1966, the family has been paralyzed because one agency of the Federal Government took away what another agency of the Federal Government gave. We have been trapped between inter-agency quarreling. This unenviable position has made the Dunigan family and the Dunigan Companies true victims. S. 2521, The Cochiti Land Exchange Act of 1990, introduced by Senators Bingaman and Domenici on April 25, 1990, will rectify this situation.

Mr. Chairman, if I may, I would like to give some background to the land exchange that occurred in 1966 and the events following that exchange that have brought us to S. 2521. The events that have occurred since 1966 are riddled with factual and legal complexities. For the benefit of the members of the Committee and their staff, I have submitted a brief chronology of these events and some important supporting documentation. This material will support and explain in detail the events that are the subject of my testimony.

In 1965, Mr. Pat Dunigan was approached by the Forest Service regarding the possibility of the Forest Service's acquisition of approximately 970 acres owned by my father in New Mexico located in an area known as the Baca Location No. 1. In exchange, the Forest Service offered my father a parcel of National Forest Land of equivalent value in New Mexico located in an area known as the La Majada Land Grant. The Forest Service was interested in obtaining a portion of the Baca Location for its use in expanding the Santa Fe National Forest. The land the Forest Service offered, known as the La Majada Grant, is located approximately 20 miles southwest of Santa Fe. The La Majada was originally granted to an individual by the Government of Spain in 1695. The grant heirs received a patent from the United States in 1908. The United States acquired the La Majada Grant by a warranty deed dated December 31, 1934. It was transferred from the Soil Conservation Service to the Forest Service in 1954 at which time it was administered as part of the Santa Fe National Forest.

One year prior to the exchange, on September 28, 1965, the Santa Fe National Forest supervisor wrote to the Governor of the Santo Domingo Pueblo to inform him of the land exchange with my father. The Pueblo was advised that the United States would eventually dispose of approximately 2,470 acres of land in the southwest corner of the La Majada Grant, and that this conveyance would include approximately 200 acres of land that the Pueblo had used for a number of years for cattle grazing purposes since a fence was never constructed on the legal grant boundary. The Pueblo made no response or objection to the land exchange.

On September 23, 1966, the United States issued a quit claim deed to my father and his companies for land within the La Majada Grant. 208 acres of this property had been fenced in by the Santo Domingo Pueblo and continued to be fenced in after my father obtained title. In 1973 or 1974, The Dunigan Companies, successor in title to my father's interest in the land, erected a sign, located on the 208 acres, offering for sale the entire 2,470 acre tract received from the Forest Service, including the 208 acres being used by the Pueblo for grazing purposes.

In 1979, 13 years after my father obtained title from the United States, The Dunigan Companies ("Dunigan") sold approximately 1000 acres of the La Majada tract to Colony Materials, Inc ("Colony"). This conveyance included the 208 acres tract that was being used by the Pueblo for grazing purposes. In 1979, the Bureau of Indian Affairs acknowledged to the U.S. Forest Services supervisor in Santa Fe—as noted in Exhibit 5—that the Pueblo had been utilizing the 208 acres for grazing purposes and acknowledged that title to the land had been in the United States since at least 1934. The 208 acres has always been located north of and outside the Santo Domingo Pueblo Grant line. This fact has been confirmed in every instance that the boundary has been subject to review or resurvey by the Department of Interior surveys, the courts, and the Indian Claims Commission.

In order to utilize the land it had obtained from Dunigan. Colony Materials wrote the Governor of the Santo Domingo Pueblo, advising the Pueblo that Colony intended to move the existing fence to the actual southern boundary of the Pueblo Grant line. On August 27, 1982, Colony received a response from the Acting Solicitor of the United States Department of the Interior—as noted in Exhibit 6—advising Colony that attempt to move the fence or exercise dominion over the 208 acres would be met with Federal criminal prosecution. This letter was Dunigan's and Colony's first knowledge of any claim either by the United States or the Pueblo. Dunigan was, to say the least, dumbfounded by this letter threatening criminal prosecution by the Federal Government if Colony were to utilize land it had purchased from Dunigan who had acquired it from the Federal Government in an "arms-length" transaction. The inherent conflict between one agency of the Federal Government blithely denying the legality of the actions of another agency of the Federal Government were apparent. Dunigan thought that there had merely been a misunderstanding within the Federal Government and that once the Forest Service documented the 1966 land exchange transaction to the Department of the Interior, fair play and justice would prevail and the adverse Federal Government claim would be dropped. However, extensive communication between Dunigan, the Forest Service and the Department of the Interior failed to convince Interior that Dunigan had obtained good title from the Federal Government. In order to resolve the question, Dunigan was forced to file suit in Federal Court seeking quiet title in 1984. The Justice Department defended the action on behalf of Interior despite vehement protest from the Forest Service proclaiming the validity of its legal, "arms-length" deal with Dunigan. The paradox of the situation left Dunigan feeling hopeless and abandoned. At the urging of the Justice Department, this suit was dismissed by the District Court because Dunigan had not filed suit within the 12 year statute of limitations on quiet title actions specified by 28 U.S.C. § 2409a(f). The position taken by Justice in the suit was a red herring as far as Dunigan was concerned because there was no reason to suspect that in a land exchange with the Federal Government that the Federal Government would subsequently argue that Dunigan should have filed suit to quiet title on land it had initially received from the Federal Government.

Suits were filed by Colony and other investors in the land against Dunigan for millions of dollars for loss of title to the land. Faced with the loss of land, mounting legal costs, the expense of an appeal within the Federal Court system without the support of the initial party to the 1966 transaction, the Federal Government, Dunigan felt compelled to enter a settlement agreement by and between Dunigan, Colony, Santo Domingo Pueblo and the United States in October of 1986. The end result of this settlement agreement and the law suits provide that the Federal Government ended up with the 970 acres it received from my father in 1966 without having to compensate the Dunigan family. The Santo Domingo Pueblo has 500 acres of the land deeded to Dunigan by the Forest Service in 1966, Colony has 1000 acres of this land that they did not pay for, and Dunigan is out $440,000 on a sales contract with Colony for the 1000 acres that was released. In addition, Dunigan has suffered attorney's fees for almost a decade.

With the support and encouragement of the Forest Service, S. 2521 will rectify these past wrongs. S. 2521 contains three major components:

1. An exchange where 37 acres of the Baca Location are given to the U.S. Government for a block of 1600 acres next to the land that the Forest Service originally deeded to my father. Dunigan will net approximately $500,000 from this unequal exchange.
2. A study by the Forest Service is authorized of the Baca Location No. 1. It is vital to the region and to the Dunigan family in order to have sufficient data in order to make decisions on the Baca's future.
3. A cash payment of $1,075,527.00 in order to compensate Dunigan for its foregone proceeds from the lost sale to Colony and its various legal and miscellaneous expenses over the past decade.

Section Seven of S. 2521. authorizes the United States Government to survey and examine lands in the Baca Location No. 1. The Baca Location is an area of important historical geological significance and unmolested natural beauty. The Valles Caldera, the summit of an enormous collapsed volcano, is located on the Baca property.

The Valles Caldera was formed nearly a million years ago as a result of a series of catastrophic eruptions that ejected nearly 50 cubic miles of volcanic material. The caldera is one of the world's largest, approximately 13 by 17 miles from rim to rim and approximately 2,500 feet deep.

From the very beginning Dunigan has been in a very precarious position with no apparent remedy. It's original deal with one department of the Federal Government, the Forest Service, was ultimately reneged on by another department of the Federal Government, the Department of the Interior. Dunigan was treated unfairly by the Federal Government, albeit by different agencies. The 1966 land exchange was a valid arm's length transaction for equal value. The Forest Service and Dunigan completed and agreed upon the exchange in good faith. Subsequently, the United States Government, by a different agency representing Indian interests, pursued a course to defeat the same land title conveyed by the United States. Dunigan certainly has no hard feelings toward the Pueblo. The actions by the Federal Government, not those of the Pueblo, brought us to the current situation.

Mr. Chairman, I urge you to support S. 2521 in order to rectify the inequities suffered by Dunigan over the past decade.

Senator BINGAMAN. Thank you.

Why do not we go ahead, before I ask any questions, and hear from Mr. Oat.

STATEMENT OF HENRY OAT, PRESIDENT AND DIRECTOR, EAST FORK PRESERVATION COALITION, SANTA FE, NM

Mr. OAT. Mr. Chairman and members of the subcommittee, I am Henry Oat, president and director of the East Fork Preservation Coalition. Members of the Coalition include the Sierra Club, Rio Grande Chapter; the Wilderness Society; the New Mexico State Chapter of the National Audubon Society; Light Hawk, New Mexico Citizens for Clean Air and Water; Forest Guardians; the Sangre de Cristo Audubon Society; and Save the Jemez. I am here today to speak on all of their behalf.

The East Fork Preservation Coalition is a nonprofit corporation based in Santa Fe, New Mexico—of which I am a resident—whose purpose is to preserve and protect the recreational wildlife, scenic, and cultural resource values of the Jemez Mountains in New Mexico.

We are pleased to appear before you today to discuss—I would like to change this for the record. I have got the number of the bill wrong here. It is S. 2521—and not S. 2512—the Cochiti Land Exchange Act, for which I will offer oral and written testimony. And I would like to provide written comments on S. 2684, S. 2527, and S. 2597.

Today I would like to discuss the Cochiti Land Exchange Act of 1990 and in particular would like to speak to section 7, Land Ownership Adjustment Study, which calls for the study of the Baca for possible acquisition by the United States.

The Jemez Mountains have long been prized for their recreational values, their wildlife values, and their scenic beauty by the citizens of Albuquerque, Santa Fe, Los Alamos, Espanola, and surrounding communities. The Jemez Mountains are also widely used by tourists visiting the State. In the last 10 years tourism has doubled in the Jemez Mountains due to the exceptional qualities that this area has to offer.

Forest Service figures show that almost 300,000 people a year stop and use Forest Service lands for camping, hiking, fishing, and backpacking. At Bandelier National Monument, which adjoins the Baca location, they expect the number of visitors to approach almost 400,000 people this year. This is third highest-frequented area in the National Park System in New Mexico.

But the crown jewel of the Jemez Mountains is the Valles Caldera, or the Valle Grande, of which the main portion of it lies on the Baca location. This is recognized as one of the largest calderas in the world; with its broad expanse of valle meadows and montane grasslands surrounded by forested caldera rim peaks and secondary domes, the Valle Grande is truly one of the most breathtaking vistas in the entire Southwest.

The Baca also encompasses one of the richest combinations of wildlife habitats in the Southwest. It contains the calving grounds of the largest elk herd in New Mexico. It is also home and habitat for a number of Federal- and State-listed endangered and threatened species.

Human habitat in the Jemez Mountains is believed to date back almost 4,000 years. And many archeologists consider the Baca and surrounding national forest lands as one of the most prolific areas in the Southwest of ancient Indian cultural resource sites. This is evidenced by major finds at Bandelier National Monument, which as I said earlier, borders the Baca location.

In this century numerous attempts have been made to bring the Baca into the Federal system by the National Park Service with no success. The National Park Service and the Forest Service have done numerous studies on the area in respect to acquiring it.

We would propose that the bill be amended to provide for an interagency study conducted jointly by the National Forest Service, the National Park Service, and U.S. Fish and Wildlife in order to adequately address all of recreational, scenic, wildlife, geologic, and other multiple-use attributes of the Baca.

We would also suggest that the study be lowered from 3 years to 1 year.

Also, in regards to national forest land that adjoins the Baca, due to pumice-mining claims that have been made under the 1872 Mining Act in the adjoining areas to the Baca in recent times here—the last 3 to 4 years—we have seen a major increase in mining claims in this area, and we are looking to Congress now to do something about the problem that is occurring there. 1,700 acres have been applied for, for patent, that adjoin the now-designated wild and scenic river, the East Fork of the Jemez.

This area, as I stated earlier, is used by hundreds of thousands of people a year, and we feel that some protection is warranted for this area, or more protection than it currently receives under Forest Service management. We are asking that, in particular, the 115,000 acres to the south of the Baca be designated as a national recreation area to emphasize the recreational qualities that this area has to offer.

This area is used for hunting, camping, fishing, hiking, backpacking and cross-country skiing, and we feel that the mining interests, given the nature of the 1872 mining law, far and above take precedent over the recreational values as it stands right now. We feel appalled that the economic gain for individuals under this law takes advantage, or takes precedence, over the use of hundreds of thousands of people. We feel that this is an inequitable situation and are looking to Congress to rectify this situation.

So what we would ask for is the 115,000 acres to the south of the Baca location be designated as a national recreation area and that during a study period, or during time legislation may be enacted upon, that the patent process be halted where it is right now and the area withdrawn from patenting. That is to say, a moratorium be placed on patenting for this area.

I think that is about all I have to say, other than that for this national recreation area, we have a petition with 15,000 signatures on it of people in the local area and people that have expressed interest in this issue from as far away as Austria and Tasmania. There is also great interest that has been expressed by people from Arizona, Texas and California that also frequent this area.

I would like to thank you for this opportunity to testify before you today.

[The prepared statement of Mr. Oat follows:]

PREPARED STATEMENT OF HENRY OAT, PRESIDENT AND DIRECTOR, EAST FORK PRESERVATION COALITION, SANTA FE, NM

Mr. Chairman and Members of the Subcommittee:

I am Henry Oat, President and Director of the East Fork Preservation Coalition. Members and supporters of the coalition include the Sierra Club—Rio Grande Chapter, the Wilderness Society, David Henderson, NM State Representative for the National Audubon Society, Lighthawk, New Mexico Citizens for Clean Air and Water, Forest Guardians, Sangre de Cristo Audubon Society, and Save the Jemez. I am here today to speak on all of their behalf.

The East Fork Preservation Coalition (EFPC) is a non-profit corporation based in Santa Fe, New Mexico, whose purpose is to preserve and protect the recreational, wildlife, scenic, and cultural resource values of the Jemez Mountains in New Mexico. We are pleased to appear before you today to discuss S. 2512, the Cochiti Land Exchange Act of 1990, for which I will offer oral and written testimony. I would also like to provide written comments on S. 2684, the prehistoric Trackways Study Act of 1990, S. 2527, the Enchanted National Forests Information and Study Act, and S. 2597, New Mexico Enabling Act Amendments.

Today I wish to speak in favor of S. 2512, the Cochiti Land Exchange Act of 1990 and in particular I would like to speak to Section 7, Land Ownership Adjustment Study, which calls for a study of the Baca Location #1 for possible acquisition by the United States.

Congress has recently acted to acquire many lands in New Mexico due to the unique qualities they have to offer. Congress has also seen fit to include sections of the Pecos and East Fork of the Jemez Rivers within the Wild and Scenic River system. The East Fork of the Jemez has its headwaters in the Baca Location #1 and runs along much of its southern boundary.

The Jemez Mountains have long been prized for their recreational values, their wildlife values, and their scenic beauty by the citizens of Albuquerque, Santa Fe, Los Alamos, Espanola, and surrounding communities.

In the last ten years tourism has doubled in the Jemez Mountains due to the exceptional qualities this area has to offer. National Forest Service figures show that almost 300,000 people a year stop and use this area for camping, hiking, fishing, backpacking, hunting, rock climbing, and cross country skiing. At Bandelier National Monument, which adjoins the Baca Location #1, the Park Service expects the number of visitors to approach 400,000 people this year. This is the third highest frequented area in the National Park system in New Mexico.

The crown jewel of the Jemez Mountains is the Valles Caldera or Valle Grande of which the largest portion is located on the Baca Location #1. This is one of the largest caulderas in the world and is "recognized as the most significant example locality of the valle-type resurgent cauldron and ash-flow tuff cooling unit of its kind in the entire world." (Draft EIS, Proposed Ojo Line Extension Project, Bureau of Indian Affairs, 1985, D0I 85-48, page III-14.) With its broad expanses of valle meadows and montane grasslands surrounded by forested cauldera rim peaks and secondary domes, the Valle Grande is truly one of the most breathtaking vistas in the entire southwest. As stated in the bill, "This area is a combination of some of the world's most intriguing geology and beautiful scenery."

The Baca encompasses one of the richest combinations of wildlife habitats in the Southwest. It contains the calving grounds of the largest elk herd in New Mexico, and is important wildlife habitat for a number of Federal and state-listed endangered and threatened species: Peregrine Falcon, Gosshawk, Jemez Mountain Salamander, Meadow Jumping Mouse, Spotted Owl, and the Wood Lily.

Human habitation of the Jemez Mountains is believed to date back almost 4,000 years. Many archaeologists consider the Baca and surrounding national forest lands as one of the most prolific areas in the Southwest of ancient Indian cultural resource sites. This is evidenced by the major finds at Bandelier National Monument which borders the Baca on the southeast corner. Peoples of the Jemez Pueblo consider this region to be sacred. The area contains many of their significant shrines and sites.

In this century numerous attempts have been made to bring the Baca into the Federal system by the National Park Service and the National Forest Service with no success. The Park Service has done at least two complete studies of the Baca with respect to acquiring it. We would respectfully request that the study proposed by this bill be amended to provide for an inter-agency study conducted jointly by the National Forest Service, the National Park Service, and the U.S. Fish and Wildlife in order to adequately address all of the recreational, scenic, wildlife, geologic, and other multiple-use attributes of the Baca Location #1. Given the extensive information already available on the Baca, we would suggest that the study period be reduced from three years to one year.

We would also request that the study be expanded to include surrounding National Forest Service lands; in particular, the approximately 115,000 acres to the south of the Baca. This area is boundaried by Bandelier National Monument on the east, Jemez Pueblo and Canada de Cochiti Grant on the south, Route 4 on the west, and the Baca Location on the north. We would ask that this area and other adjacent lands be considered for National Recreation Area status.

We feel that National Recreation Area status is warranted for this region due to the abuse and misuse it has received in recent times. For the past two years citizens' groups and area residents have been increasingly concerned about the vast number of pumice mining claims recently filed for in the Jemez Mountains under the 1872 Mining Law. These claims now cover between 15,000 and 20,000 acres on national forest land. During the past nine months we have obtained over 15,000 signatures on a petition supporting the following actions: 1. Permanent Federal designation of the East Fork region as a National Recreation and Wild and Scenic River Area; 2. Cessation of strip-mining, clear-cutting, and other destructive development of this Area; 3. Withdrawal of the East Fork region from current and future mining claims and patents; 4. Immediate restoration and reclamation of strip-mined land within this Area; 5. Repeal of the obsolete patenting provisions of the 1872 Mining Act; 6. Revision of New Mexico's State Mining laws to require reclamation of all mines on private and public lands.

Under the 1872 Mining Law, pumice that is over 2" in size and possesses "special and unique" properties reflected by a higher market value may be considered a "locatable" mineral and therefore claimable. Over the last five years, the demand for block pumice has been fueled by the garment industry. It uses the pumice to soften fabric and impart bleach which results in the "stone-washed" look in denim clothing and which has become a fashion fad.

In 1987, 1988, and 1989 Richard Cook, president of Copar Pumice Company, and his family claimed over 7,000 acres in the heart of the Jemez Mountains for pumice mining. In August 1988, Copar filed an operating plan with the Forest Service to begin mining on 33 acres along the East Fork of the Jemez River, which has now been designated a wild and scenic river by legislation passed by the U.S. Senate and House of Representatives. Because Copar indicated that it would apply for patents on the land unless its operating plan was approved, the Forest Service quickly moved ahead in approving the operating plan. The operating plan was appealed by many environmental groups, unsuccessfully. That appeal is currently pending in the U.S. District Court.

Richard Cook and his family subsequently filed for patent on 1,700 acres in the East Fork area. Many of these claims adjoin the wild and scenic corridor the East Fork.

There is a serious question as to the validity of Mr. Cook's mining claims. In a recent interview with the Associated Press, Mr. Cook stated that only ten percent of the pumice being mined at the Jemez site is going for a "locatable" use that reflects a higher market value, i.e., stonewashed jeans. The majority of the pumice, ninety percent, is going for "common variety" purposes such as building materials. Common variety pumice is not claimable under the 1872 Mining Law but is being sold to Copar by the Forest Service. Under the Santa Fe National Forest Plan, the sale of common variety pumice would not be allowed in this area, yet the Forest Service is selling to Copar sixty percent of the pumice from this deposit, as it is deemed to be common variety pumice.

Given the current and foreseeable future market for pumice, the 1,700 acres claimed by Richard Cook is more pumice than he could mine and sell in two lifetimes. It is possible that Mr. Cook plans residential or resort development for this area. Current land prices in the East Fork area are as high as $20,000 per acre. This means that Mr. Cook and his family could obtain land that is worth many millions of dollars for the nominal sum of $4,250.

We find it appalling that the economic gain of four individuals takes precedence over the use of this area by literally hundreds of thousands of people. We respectfully petition Congress to rectify this situation. We submit, as a provision of this study, that Congress enact a ban on the processing of current and future patent applications in the Jemez Mountains until the study for the Baca and adjoining lands is completed and legislation is acted upon. This would not effect Copar Pumice Company's ability to mine on their current 33-acre site which has an estimated ten-year reserve.

The area proposed for National Recreation Area status has been heavily abused by an inordinate emphasis placed on timbering, road building, and mining under National Forest Service management. Due to the extremely large appropriations that the Forest Service budget receives for road building to facilitate timber harvesting, road density in the proposed Recreation Area is higher than in the nearby city of Los Alamos. Recent timber sales have violated the Santa Fe National Forest Plan, resulting in erosion on steep slopes, logging through stream courses, and a mysterious doubling of the harvest size. Logging practices in the Jemez have also resulted in widespread ruination of numerous cultural resource sites. Last year on the Santa Fe National Forest timber harvesting resulted in a deficit of $1.5 million.

It is our belief that the current Jemez Ranger District and Santa Fe National Forest management has neither the staff nor the inclination to properly manage this area for true multiple-use. Again we would ask that this area be considered for National Recreation Area status under this study to protect and preserve the recreational, ancient forest, cultural, and wildlife values for present and future generations.

I would like to thank you for the opportunity to appear before you today. This concludes my oral testimony, Mr. Chairman. I would be happy to answer any questions that you or other members of the Subcommittee might have.

COMMENTS ON S. 2684, THE PREHISTORIC TRACKWAYS STUDY ACT OF 1990

I am pleased to be able to support the Prehistoric Trackways Study Act. This bill will authorize a study of the best way to preserve and interpret nationally significant dinosaur fossils found in the Robledo Mountains near Las Cruces, NM. A very important provision of the bill is the interim protection afforded for the Prehistoric Trackways Protection Area while the study is underway.

Mr. Chairman, the Prehistoric Trackways Protection Area is located just outside of the spectacular Robledo Mountains Wilderness Study Area (WSA). This area combined with the nearby Las Uvas WSA has been proposed for formal wilderness status by the New-Mexico wilderness coalition. This presents an opportunity for the interpretive facility studied under S. 2684 to focus not just on the paleontological resources, but also the other natural and cultural values found in this diverse area.

I would like to propose several minor amendments to the bill. First, it is my understanding that the significant dinosaur fossils extend beyond the forty acre protection area authorized in the bill. The protection, therefore, should be extended to an area of approximately 1,000 acres. Second, the mineral withdrawal for the area should include a ban on mineral leasing as well as hard rock mining to ensure adequate protection. And finally, I believe that the withdrawal should not expire two years after the study is completed so that these important resources will be preserved until Congress makes a final decision about how to provide permanent protection.

COMMENTS ON S. 2527, THE ENCHANTED NATIONAL FORESTS INFORMATION AND STUDY ACT

New Mexico's National Forests are a major part of the enchanted beauty of our state. People come from around the world to enjoy and learn about this unique natural beauty. The Enchanted Forests Act will help these visitors to better appreciate the extraordinary value that these forests have for watershed protection, recreation, wildlife (including many rare and endangered species), scenic preservation, archaeology and other purposes.

Unfortunately, the Forest Service has not done enough to recognize the importance of the unique non-commodity values of National Forests. Instead, the agency has increased the level of road construction and logging on the forests over the historic levels and is proposing to invade sensitive wildlife habitat on steep slopes, at high altitudes and in roadless areas. This accelerated logging level is starting to jeopardize the non-commodity values that are increasingly important to citizens of the state. What's worse, studies conducted by economists at the Wilderness Society and Cascade Holistic Economic Consultants (CHEC) show that New Mexico National Forests are losing taxpayer dollars. This is a shocking subsidy of environmental degradation.

I would like to commend Senator Bingaman for working hard to increase environmental education in New Mexico. It is critically important that citizens, especially young people, are able to learn about environmental problems and what they can do to solve them. The Enchanted National Forests Information and Education Study Act is another step towards achieving this important goal. Hopefully, it will also help the Forest Service to focus more attention on protecting these vital lands.

COMMENTS ON S. 2597, NEW MEXICO ENABLING ACT AMENDMENTS

I am pleased to support the New Mexico Enabling Act Amendments sponsored by Senator Domenici. This bill will remove a roadblock preventing the State of New Mexico from trading state trust land with other parties. While I do not agree that the state is not able to trade land now, these amendments will remove any doubt that it can be done.

The state needs the flexibility to trade with the BLM and other parties to block up ownership of land and provide better resource management. This, of course, must be consistent with other applicable state and Federal laws to ensure that land trades are in the public interest and that each trade is for equal value. Mr. Chairman, I should point out, however, that I have not been able to analyze all of the land trades that have occurred to date, so I am not prepared to comment on this portion of the bill.

Thank you for the opportunity to present these comments today. I will be happy to answer any questions that you or other members of the Subcommittee may have.

Senator BINGAMAN. Thank you very much.

Let me ask Mr. Dunigan a question or two. The Forest Service proposal to essentially eliminate the unequal aspect of the land exchange and instead have a greater cash payment as part of the bill, the Forest Service representative indicated that it had been discussed with Dunigan Enterprises. Is this something you are aware of, this proposal? Is this a course that makes sense from your point of view?

Mr. DUNIGAN. Indeed it is. They have discussed these adjustments with us, and we do support them.

Senator BINGAMAN. Okay. On the issue that Senator Domenici raised as to how long it will take to get this kind of change-around to occur, we are obviously getting toward the end of this legislative session and it is, I think, important, if we are going to act on this this year, that we get a clear indication both from yourselves and from the Forest Service as to what changes would be needed here. How quickly do you believe that could be done?

Mr. DUNIGAN. I think it could be done quite readily. We have already discussed the figures relating to the damages we have suffered with the Forest Service and have agreed upon some figures with them.

Senator BINGAMAN. On the issue of the study of the Baca location, there has been a lot of discussion, as I believe your testimony and Mr. Oats testimony both indicated, about possible Federal agency involvement there, or ownership. What are your thoughts as to which of the Federal agencies should be administering the Baca location if it were acquired by the United States? Do you have views on that at this point, or is that something you think would have to be studied further?

Mr. DUNIGAN. I think, Senator, it is premature at this time to discuss possible designations for the ranch or management programs. However, I do endorse a multi-agency study. I think the Forest Service, Park Service and Fish & Wildlife could provide a more comprehensive study on which we could make a more informed and educated decision at that time, subsequent to the study.

Senator BINGAMAN. Then you are in agreement with Oats on that interagency study?

Mr. DUNIGAN. Yes, I am.

Senator BINGAMAN. He also indicated that he felt that 3 years rather than 1 would be appropriate. Do you have any thoughts on the length of time that the study should take?

Mr. OAT. One year rather than 3, Senator.

Senator BINGAMAN. One rather than 3. Excuse me.

Mr. DUNIGAN. I think that determination will have to be made in large part by those agencies who would be charged with conducting the study. However, we do not have any preference. 1 year would be preferable, if they could achieve their objectives in that period.

Senator BINGAMAN. Mr. Oat, let me ask you, on your suggestion about a national recreation area designation, what would the legal effect of that be?

Mr. OAT. Well, the legal effect of that—I do not think there really would be any. It would still remain under Forest Service management as it currently is right now. It would just change the emphasis of the management. In the past years, one of the problems has been that this area that we have proposed has been heavily abused by an inordinate emphasis placed on timbering, road-building and mining under the national Forest Service management, and due to the extreme, large appropriations that the Forest Service budget receives for road-building to facilitate timber harvesting, road density in the proposed recreation area is higher than in the nearby city of Los Alamos.

We are looking at an area where a lot of abuse has occurred under Forest Service management, and we are looking at redirecting the management for that area to allow for true multiple use and to give the recreational, wildlife and other values in the area more of an emphasis than they have received in the past.

Senator BINGAMAN. Let me defer to Senator Domenici to ask any questions that he might have relative to the Cochiti Land Exchange bill.

Senator DOMENICI. I only have two. With reference to the changing of the management scheme for the adjoining land that you have discussed, that is not in any of the bills before us, is it?

Mr. OAT. No, it is not. We are looking to seek to amend the current study. The section on the study for the Baca to include—or, expand it to include Forest Service land also, to look at the broader picture of how this area could best be managed.

Senator DOMENICI. I gather we have no evidence in the record, do we, Mr. Chairman, from the managing agency with reference to that recommendation?

Senator BINGAMAN. We did not ask any question to my mind. To my recollection, they did not testify on that.

Senator DOMENICI. I just have a general question with reference to the study, and I ask this of you, Mr. Chairman, as much as the witnesses.

In reading the study language for the Baca, did I miss something, or does it not include some indication of how much it might cost?

Senator **Bingaman**. I do not know that we have a figure in there specifying the cost at this point. We probably need to get from the agencies their estimates and amend it to include that.

Senator **Domenici**. I think it would surely, while not conclusive to a study, I think any study that indicated Federal acquisition in whole or in part, I think we ought to at least have some indication of the parameters of what it might cost the Federal Government for the purposes that are going to be recommended in the study.

Senator **Bingaman**. You are not as concerned about the cost of the study as you are the cost of the potential acquisition?

Senator **Domenici**. You have got that right. I mean, the study is not going to be—we ought to get that done. It is very significant to New Mexico. But I think at some point we ought to know if it is a study that indicates that there is a real public purpose involved as compared to leaving it in private ownership. We ought not get everybody's spirits up if in fact it is going to cost so much that we are never going to be able to proceed. I would think that we ought to at least ask the agencies involved in doing the study to give us the parameters of what the costs are.

Senator **Bingaman**. I think that is an excellent idea.

Mr. **Dunigan**. Senators, if I may interject for a moment, in Mr. Sirmon's testimony earlier this morning, in his written testimony, he notes that such a study would cost $200,000 over fiscal years 1991 to 1993.

Senator **Domenici**. That is not the issue. We have no problem with that. We are talking about if we were going to acquire it, what is it gong to cost? Not the study, but the acquisition. I think the Chairman agrees we ought to include that and some parameters ought to be given to us as to what this might cost.

I have no other questions.

Senator **Bingaman**. Let us dismiss the witnesses on this bill, and thank you both again—all of you again—for testifying today. We will try to make the necessary changes and move ahead with this legislation before the session ends.

At this point, let me call the Commissioner of Public Lands, Bill Humphries, to come forward and give testimony on this enabling act legislation which Senator Domenici introduced and which I am co-sponsoring.

We are glad to have you here.

Why do you not go ahead and give us your views on the legislation and the reason why you believe it is important.

Mr. **Humphries**. Senator Bingaman, Senator Domenici, as you mentioned my name is Bill Humphries. I am the elected Commissioner of Public Lands in New Mexico.

Senator **Domenici**. Commissioner, would you hold a moment. I would like the record, before we get to the Commissioner, to reflect that the Dunigans are represented by a lawyer named Ed Hamberger, and I would like the record to show that he is my sister's brother-in-law. He just entered the case 2 weeks ago, and I have been involved for a couple of years, but he is their lawyer at this point, and I would like the record to show that he is the brother of Martin Hamberger, who is married to my sister.

Senator **Bingaman**. All right. We will have that on the record. Yes. Go right ahead.

STATEMENT OF HON. WILLIAM R. HUMPHRIES, COMMISSIONER OF PUBLIC LANDS, STATE OF NEW MEXICO, SANTA FE, NM

Mr. HUMPHRIES. Mr. Chairman, we have presented for the committee, for the record, extensive written testimony and I will not repeat that in order to try to get through this very quickly. I do want to make a few verbal comments for the record and answer your questions. Both you and Senator Domenici are very well aware of these issues surrounding land ownership patterns in New Mexico and other western States.

New Mexico received two grants, a territorial grant and a statehood grant, and we got about 13.5 million acres of land from both grants. The pattern of the grants, being sections 16 and 36 and section 2 and 32, or 4 square miles out of every 36 square miles, started to create the land checkerboard pattern that exists today, and the Commissioner is exclusively charged with the management of those State trust lands as a trustee would be, and it is an exclusive trust for the benefit and purpose of those beneficiary institutions that the legislation that Congress authorized named.

That obligation of protection has become very difficult in this land ownership pattern that we have described. The beneficiary institutions now receive some $350 million a year as a result of these lands—about $250 million from the permanent fund that has arisen solely from these State trust lands and about $100 million a year in other income.

The Commissioner's constitutional responsibility and trust obligation are to maximize those income resources for those institutions, yet preserve the assets of the trust for a continual—we call it intergenerational trust, and we believe that that is appropriate and can be done, but we need to make some changes.

Congress has expressed its interest in land exchanges as a result of the Federal Land Exchange Facilitation Act of 1988 and historical actions from the beginning of statehood with us and other States. In 1987, the University of New Mexico, one of the beneficiary institutions, approached me and asked to exchange some fee land that they owned for some trust land very near there but south of Albuquerque in an area where they wanted to ultimately build a research park and add to the university campus and to very large and important urban development project under the guidance of the land office but in the Albuquerque area.

We looked at that very extensively and finally were concerned about the authority of the Commissioner to exchange with the beneficiary, simply because there was not clear legal direction. I sought an opinion from the Attorney General of New Mexico and asked for some definition and direction on that, and the Attorney General returned the opinion that the Commissioner did not have the authority to exchange with the beneficiary institution.

Well, that left us in the sort of unusual circumstance of trying to figure out what we could do. As we read the Attorney General's opinion we became aware that we had other problems that were sort of implied by the Attorney General's opinion about other exchanges, historically and prospectively.

We looked back to the record and what we found in the record was interesting, and unfortunately maybe New Mexico forgot some of the congressional as well as constitutional history, but we find that in 1926 Congress authorized the Commissioner of Public Lands, through this same type of process that we are proposing here, to exchange State trust lands inside the national forest for other lands of the United States. In other words, to get these section 16 and 36 especially out of the national forest. That was taken to the voters subsequently and failed. It was taken to the voters again in 1929 and failed, and ultimately it passed in 1931.

In 1935, the Commissioner of Public Lands was asked by the State legislature in New Mexico to consider the same thing and then that subsequently was presented to the voters in a more expanded fashion to exchange for all lands, not just national forest lands, and that failed.

So we have four attempts, of which one very specific attempt was successful in New Mexico to amend our constitution with the consent of Congress regarding land exchange. That left us in a very clear dilemma. We sought over a period of 2 years with the Attorney General's Office to find a way to resolve this perhaps by litigation, perhaps by some other method.

Finally, what we concluded at the direction of the Attorney General was, why do you not amend the enabling act, take the question to the voters, which is exactly what the process was intended to do in the first place? That is what our enabling act and constitution contemplated when you are talking about amending section 10. We find ourselves in this position. We have asked, after careful work with Senator Domenici's office and your office, if you would sponsor this bill and we can get on with the process of taking this to the voters of New Mexico.

I think that the map that I brought, although you all are very familiar with it, presents the dilemma—it presents the reason very vividly. Very quickly, the gray land is private land that was authorized by the Treaty of Guadalupe Hidalgo under the Spanish land grants. White land is patented land of a private nature that somehow or another passed title from the United States to private ownership, mostly railroad grants and Homestead Act land. Yellow is Bureau of Land Management. Orange Indian trust land, blue State trust land, and the large pink area you see is the military lands and White Sands and MacGregor range.

Perhaps no place is it more vividly indicated—the problem—than in the upper left-hand corner of the map, as you all recognize, northwestern New Mexico, where you see the Navajo Reservation and the large contiguous area and then the area known as the Eastern Navajo Expansion Area and 709, 744 areas, and the Navajo irrigation project.

All of those lands out there, if you can look towards the right-hand side of the map from the large contiguous block, you see large amounts of State trust land, you see Bureau of Land Management land, you see private land, you see a national park, Chaco Canyon, you see the congressional and executive order lands. So we have a very large area there of very badly convoluted ownership.

What has happened in that particular area now is we are having a difficult time defining boundaries for jurisdiction, et cetera. So I think this indicates an area where we could make substantial progress. There are about 85,000 acres of trust land in that general area.

In 1990 we asked the State legislature in New Mexico to pass a resolution and memorial to start this process. They did. You all have supported us and worked on this problem with us. We would like to indicate that we have done some analysis and inventory.

We have 7,500 tracts, approximately, of land over 40 acres that are New Mexico State trust lands. We have another 500 tracts of land slightly smaller than 40 acres, all the way down to fractions of acreage, and as you can imagine, 8,000 acres of land surrounded by, adjacent to and sometimes surrounding other land ownerships becomes a very difficult resource management problem for everybody, not just the land office in New Mexico.

We believe that this legislation, S. 2597, would verify the Commissioner's authority to exchange any land granted or confirmed by our enabling act with any agency of the U.S. Government, any State agency or political subdivision or beneficiary of the lands granted and confirmed by the act, any Indian tribe or pueblo or any private entity, when the Commissioner finds, after consultation with the chief administrative officer of the affected beneficiary institution of the land involved, the true value of the land to be received by the State is greater than or equal to the land exchanged by the State, and that the exchange is beneficial to the affected beneficiaries and that also this proposal would provide retroactive validation and ratification of all of the prior land exchanges made under this act.

We believe that the advantages of the act are the ability to consolidate land ownership, to reduce the problems of checkerboard ownership, and in many instances to help the beneficiary institutions, because at this point the Commissioner simply cannot provide some of the services that were intended by the office in exchanging with the beneficiary institutions such as the University of New Mexico.

In closing, I believe that the voters of New Mexico will support the act. I think the amendment will pass if we can proceed with it. The beneficiary institutions can realize the full intent of the trust and New Mexico can see completion of some other exchanges that were the intent of Federal legislation, and policies of Federal land management agencies regarding wilderness areas, wildlife refuges and national parks and other special and unique areas without defeating the intent or the purpose of the trust.

Thank you.

[The prepared statement of Mr. Humphries follows:]

Prepared Statement of Hon. William R. Humphries, Commissioner of Public Lands, State of New Mexico, Santa Fe, NM

Mr. Chairman, my name is Bill Humphries. I am the Commissioner of Public Lands for New Mexico. I am a constitutional officer of the state, elected by the voters to carry out the constitutional responsibilities and obligations as a trustee for the states trust lands.

Through this written statement and verbal testimony, I wish to provide some background information and the reasons we requested a change in our Enabling Act. New Mexico received territorial grants for public schools and other beneficiary institutions in 1898 and again at statehood in 1912. Congress made the grants to New Mexico to be held in trust specifically and exclusively for those beneficiary institutions named. These grants charged New Mexico with a very strict obligation of protection for our state trust lands in order to prevent the losses and mismanagement that Congress had previously witnessed in other state grants. The New Mexico Constitution and the Enabling Act combine to create a very strict and protective trust for the control and disposition of these state lands. The commissioner's constitutional obligations are to maximize revenues from these trust lands for the exclusive use of the designated beneficiary institutions and to protect the assets and resources of the trust in a fashion that will provide for continuous income into the future.

The total territorial and statehood grants amounted to approximately 13.4 million acres. Presently there are approximately 9 million surface acres and 13 million acres of minerals. There have been approximately 4 million acres of surface sold and some minor adjustments in ownership of minerals through condemnation action by the Federal Government. Annual income provided to New Mexico public schools, universities, and other beneficiary institutions is over 350 million dollars. The surface ownership in New Mexico is approximately 45 percent private, 12 percent state trust lands, 10 percent Indian land and the balance, approximately 33 percent, federal. The majority of the Federal land is the Bureau of Land Management followed by the U.S. Forest Service, and military lands.

The results of the grants by granting numbered sections 16 and 36 and 2 and 32 plus approximately 3 million acres of institutional and indemnity grants combined with the various methods of establishing private ownership resulted in what is recognizable as the checkerboard pattern of hopelessly intermingled land ownership. Consequently, in many cases all land owners property rights and responsibilities are limited by other ownerships. Although neither this proposed constitutional amendment and change to our Enabling Act nor land exchanges themselves will completely change this pattern, they will provide significant improvement in both solving problems and realizing the intended purposes of New Mexico's state trust lands.

Congress recently enacted the Federal Land Exchange Facilitation Act of 1988, indicating congressional awareness of the need for land exchanges. Other states conduct land exchanges under a variety of authorities and/or interpretations of their statutes and enabling acts. In New Mexico we have been conducting exchanges since statehood. Since numbered sections often fell within Indian Lands and private lands the state was allowed to select other Federal lands. For all practical purposes, this was an exchange although not so described in our Enabling Act.

In 1987, the University of New Mexico (a beneficiary), requested to exchange some trust lands where they are the designated beneficiary for some fee lands that they own. Although the Land Office had conducted one such prior exchange with the University of New Mexico, I was uncertain of the legal authority to proceed with this exchange. Subsequently, I requested an opinion from our state attorney general as to whether the commissioner of public lands could exchange with private entities, beneficiary institutions, state and local government subdivisions, and other Federal agencies other than the Department of Interior. The attorney general stated that the commissioner did not have the authority to conduct such exchanges and raised questions about the commissioner's authority to exchange with the Secretary of Interior.

There were several important questions raised by the attorney general's opinion and after an extended period of time analyzing the opinion and our options it was concluded by the attorney general and myself to proceed with the process to amend our Enabling Act.

Other important background information indicates that in 1926 the Congress authorized an amendment to our Enabling Act to allow the state to exchange state lands in the National Forest for United States land. Subsequently, a joint resolution from the New Mexico legislature proposing an amendment to the constitution was voted on in 1927 and failed. In 1929, the New Mexico legislature again proposed an amendment arising from the same congressional act and presented it to the voters. This second attempt also failed. In 1931, the New Mexico Legislature passed a third resolution to put this same constitutional amendment on the ballot. Finally, the amendment passed. In 1935, the New Mexico legislature passed a joint resolution proposing another amendment for more extensive authorization of land exchanges between the state of New Mexico and the United States (subject to the approval of Congress and the voters) similar to what we now propose. The New Mexico voters again rejected the amendment. It does not appear that congressional consent was sought or granted for this amendment. However, history clearly reveals that the people of New Mexico have acted upon several exchange amendments and have clearly limited the commissioner's authority to exchange.

The reasons for land exchanges have been mentioned previously, but some additional information may be useful. There are approximately 7,500 separate tracts of state trust land larger than 40 acres, and approximately 500 separate tracts of state land smaller than 40 acres. This requires no further description as to what kind of problem that presents for resource management. There are significant conflicts between various ownerships adjacent to, within or surrounding state trust land. These are often with the Federal Government, Indian tribes, and private landowners. This occasionally causes a very significant problem to the beneficiaries of the trust and other state and local government entities.

The New Mexico Legislature in 1990 passed a joint resolution and memorial asking that Congress authorize an amendment to our Enabling Act and authorizing a constitutional amendment to be on the ballot in the November 1990 general election. The intent of the New Mexico Legislature and S. 2597 are to set forth the terms that clarify the authority to exchange lands and to validate prior land exchanges.

S. 2597 would clarify the commissioner's authority to exchange any land granted and confirmed by our Enabling Act. This authorization would include any land of the United States or an agency thereof, state agency or political subdivision, beneficiary of the lands granted or confirmed by this act, any Indian Tribe or Pueblo, or private entity. When the commissioner finds, after consultation with the chief administrative officer of the affected beneficiary of the land in question, that based upon appraisals, the true value of the land to be received by the state is equal to or greater than the land exchanged by the state and that the proposed exchange is beneficial to the affected beneficiaries then an exchange could be made. The proposal also provides retroactive validation and ratification of land exchanges made prior to the effective date of this amendment and will not prejudice the interest of any person and will benefit the interest of the parties to such exchanges.

The advantages of the proposed amendment are many. Predominantly, the ability to consolidate land ownership and reduce the problems of checkerboard ownership. It can reduce conflict between other land ownerships, allow the opportunity to adjust ownership boundaries, and also allow the commissioner, in many instances, to help beneficiary institutions directly.

In closing, I believe that the voters of New Mexico will support this proposed amendment. Subsequently, the state of New Mexico and the beneficiary institutions can continue to realize the full benefits of these state trust lands. This also will allow the completion of certain exchanges to realize the intent of Federal law and policies regarding wilderness areas, wildlife refuges, national parks, and other special and unique areas without defeating the intent and purpose of the state trust lands.

Senator BINGAMAN. Thank you very much. I compliment you for having moved ahead to get this done. This is an issue I think that has plagued our State for some time, and particularly the Commissioners of Public Lands in New Mexico, and I do think you are about to bring it to closure here, and we hope we can pass this legislation as a part of that effort. So let me defer to the legislation's prime sponsor, Senator Domenici.

Senator DOMENICI. Thank you very much, Mr. Chairman.

Commissioner, let me say that I, too, hope that we get this accomplished for New Mexico. Having spoken with you about this for a long time, I am convinced those who benefit from your trusteeship in New Mexico are indeed going to benefit more if the land commission—land office has some additional management opportunities for this day and age.

I am absolutely convinced that all the protection that is built into the existing situation with reference to your fiduciary relationship and thus the highest responsibility with reference to trades that are going to be permitted will remain.

The State legislature wants this to go on the ballot, and I would like to put their memorial asking Congress to do this and proposing the constitutional amendment in the record, Mr. Chairman.

Senator BINGAMAN. We will include that.

[The information referred to follows:]

The Legislature of the State of New Mexico

THIRTY-NINTH LEGISLATURE

SECOND SESSION, 1990

INTRODUCED BY
REPRESENTATIVES GLENN BRISCOE, ROBERT S. LIGHT, LEO C. WATCHMAN
LYNDA M. MORGAN, JAMES ROGER MADALENA, BEN LUJAN, DONALD L. WHITAKER
JERRY W. SANDEL, JOE M. STELL, PAULINE B. EISENSTADT, EARLENE ROBERTS
BLAKE B. CURTIS, RICHARD P. CHENEY AND ALBERT SHIRLEY

A JOINT MEMORIAL
MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO AMEND SECTION 10 OF THE ENABLING ACT FOR NEW MEXICO TO CLARIFY THE AUTHORITY OF NEW MEXICO TO EXCHANGE LANDS GRANTED TO IT BY CONGRESS AND TO CONSENT TO AN AMENDMENT OF THE COMPACT BETWEEN THE UNITED STATES AND NEW MEXICO

WHEREAS, IN THE FEDERAL LAND EXCHANGE FACILITATION ACT OF 1988, CONGRESS FOUND THAT LAND EXCHANGES ARE A VERY IMPORTANT TOOL FOR STATE LAND MANAGERS TO CONSOLIDATE LAND HOLDINGS FOR MORE EFFICIENT MANAGEMENT AND TO SECURE IMPORTANT STATE OBJECTIVES; AND

WHEREAS, THE ENABLING ACT FOR NEW MEXICO, OF JUNE 20, 1910, CH. 310, 36 STAT. 557, PROVIDES GUIDELINES FOR EXCHANGE OF LANDS GRANTED TO NEW MEXICO BY CONGRESS IN THE CASE OF RECLAMATION PROJECTS OR NATIONAL FORESTS BUT DOES NOT EXPRESSLY ADDRESS THE STATE'S EXCHANGE AUTHORITY IN OTHER SITUATIONS; AND

WHEREAS, ALTHOUGH THE STATE HAS COMPLETED, IN GOOD FAITH, THOUSANDS OF ACRES OF EXCHANGES FOR PURPOSES OTHER THAN RECLAMATION AND NATIONAL FORESTS PURSUANT TO ITS INTERPRETATION OF THE ENABLING ACT FOR NEW MEXICO AND GENERAL TRUST PRINCIPLES, REASONABLE MINDS MAY DIFFER AS TO THE AUTHORITY OF THE STATE TO MAKE SUCH EXCHANGES; AND

WHEREAS, CLARIFICATION OF THE STATUS OF SUCH PRIOR EXCHANGES COULD AVOID POTENTIAL HARDSHIP AND HARM BOTH TO THE STATE AND THE OTHER PARTIES TO THE EXCHANGES; AND

WHEREAS, THE INCREASED INTEREST IN EXCHANGES MANIFESTED BY THE FEDERAL LAND EXCHANGE FACILITATION ACT OF 1988 DEMANDS THAT THE STATE'S POWER TO EXCHANGE LANDS GRANTED TO IT BY CONGRESS BE CLARIFED SO THAT THE PURPOSES OF THE LAND GRANT ARE SECURED;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO, THAT THE CONGRESS OF THE UNITED STATES BE RESPECTFULLY PETITIONED TO AMEND SECTION 10 OF THE ENABLING ACT FOR NEW MEXICO, AS AMENDED, TO LIMIT THE EXCHANGES OF LANDS GRANTED TO THE STATE BY CONGRESS, WHETHER SUCH EXCHANGES BE WITH THE UNITED STATES OR AN

AGENCY THEREOF, WITH A STATE AGENCY OR POLITICAL SUBDIVISION, WITH A LAND GRANT BENEFICIARY, WITH AN INDIAN TRIBE OR PUEBLO OR WITH A PRIVATE ENTITY, TO THOSE EXCHANGES WHERE THE COMMISSIONER OF PUBLIC LANDS AFTER CONSULTING WITH THE CHIEF ADMINISTRATIVE OFFICER OF THE AFFECTED LAND GRANT BENEFICIARY, FINDS, BASED UPON AN APPRAISAL OF THE TRUE VALUE THEREOF, THAT THE VALUE OF THE LAND TO BE RECEIVED IS EQUAL TO OR GREATER THAN THE VALUE OF THE LAND TO BE CONVEYED BY THE STATE AND THAT THE PROPOSED EXCHANGE IS BENEFICIAL TO THE INTERESTS OF THE AFFECTED BENEFICIARY; AND

BE IT FURTHER RESOLVED, THAT THE CONGRESS OF THE UNITED STATES BE RESPECTFULLY PETITIONED TO CONSENT TO AN AMENDMENT OF ARTICLE 21 OF THE CONSTITUTION OF NEW MEXICO AS AMENDED NOVEMBER 7, 1911, TO EFFECTUATE THE CLARIFICATION OF EXCHANGES AS PROVIDED HEREIN AND TO CLARIFY THE STATUS OF PRIOR EXCHANGES OF LANDS GRANTED OR CONFIRMED BY THE ENABLING ACT FOR NEW MEXICO AND MADE BY THE STATE PRIOR TO JANUARY 1, 1990, BY VALIDATING, RATIFYING AND CONFIRMING SUCH EXCHANGES AS BEING IN SUBSTANTIAL COMPLIANCE WITH THE PROVISIONS OF SECTION 10 OF THE ENABLING ACT FOR NEW MEXICO; AND

BE IT FURTHER RESOLVED, THAT COPIES OF THIS MEMORIAL BE SENT TO THE PRESIDENT OF THE UNITED STATES SENATE, THE SPEAKER OF THE UNITED STATES HOUSE OF REPRESENTATIVES AND THE NEW MEXICO CONGRESSIONAL DELEGATION.

SIGNED AND SEALED AT THE CAPITOL,
IN THE CITY OF SANTA FE.

RAYMOND G. SANCHEZ, SPEAKER
HOUSE OF REPRESENTATIVES

STEPHEN R. ARIAS, CHIEF CLERK
HOUSE OF REPRESENTATIVES

JACK L. STAHL, PRESIDENT
SENATE

JUANITA PINO, CHIEF CLERK
SENATE

Senator **Domenici**. The Attorney General of New Mexico has a rather lengthy legal opinion indicating that this is needed if indeed you are going to have the authority to engage in the kinds of land exchanges that you have described as being absolutely necessary for the modern management of this kind of land.

You have given us examples of different entities in the State, and they are in the record in my statement, of where you would have made exchanges that would have been mutually beneficial, some to small communities like Los Lunas, and yet at the same time very beneficial to the overall value of the trust estate, which you cannot do.

Let me just ask this question: have you heard from the Secretary of State as to what the time frame is for this? I heard that if we do not have it passed by September 11, it probably will not get on the ballot. Is that a fair statement?

Mr. **Humphries**. Mr. Chairman, Senator Domenici, yes, we have been informed by the Secretary of State that it would not be on the 1990 ballot if it is not proceeded through and passed by Congress and signed into law. However, we understood earlier that Congress had a very busy schedule, and this was only one of many pieces of legislation.

Simply, what that would mean—that is, if Congress is unable to proceed with this and have the signature of the bill, that it would be on the ballot at either a special election called for that purpose, or on the 1992 regular election ballot. So we would like to have it by September 11, yet we realize that is a very ambitious date.

Senator **Domenici**. In any event, we are going to try to get it through. It may be difficult, by September 11, to get it through both Houses.

Senator **Bingaman**. It could be, considering that first week after Labor Day we are not going to be here.

Senator **Domenici**. We will try our best.

I have no further questions. I thank you for your consistence and your diligence and the professional way that you helped us put this package together. I think without that we surely would not be here, and we want to get this done for New Mexico.

Thank you very much.

Senator **Bingaman**. Let me thank you also again and enclose in the record, in addition to the items that Senator Domenici has mentioned there, this letter dated July 26 from Richard Halligan, the President of the University of New Mexico, to Senator Bumpers, in strong support of the passage of the legislation as well. The University of New Mexico, of course, is one of the prime beneficiaries under the trust, and strongly supports this legislation.

Thank you very much for being here. We appreciate it.

[The material referred to follows:]

ATTORNEY GENERAL OF NEW MEXICO,
Santa Fe, NM, May 23, 1988.

OPINION OF HAL STRATTON, ATTORNEY GENERAL

OPINION NO. 88-35

By: LYN HEBERT,
Assistant Attorney General.

To: WILLIAM R. HUMPHRIES,
Commissioner of Public Lands, P.O. Box 1148, Santa Fe, NM.

Question:

May the Commissioner of Public Lands exchange state trust lands for lands of equal value whether held in private ownership or by other state agencies, local governing bodies, trust land beneficiary institutions and Federal agencies, other than the Department of the Interior?

Conclusion:

No.

Analaysis:

To determine whether the Commissioner of Public Lands (Commissioner) has authority to make the exchanges set forth in the inquiry, we must consider relevant provisions of the New Mexico Constitution, the Enabling Act, and applicable statutes. On June 20, 1910, Congress passed the Enabling Act, which allowed and regulated New Mexico's and Arizona's admission into the union. Act of June 20, 1910, 36 Stat. 557. Pursuant to the Enabling Act, the Federal Government transferred approximately thirteen million acres of land to New Mexico to be held in trust for certain specific purposes. 15 Nat'l. Resources J. 581, 583 (1975). The people of New Mexico consented to the terms and conditions of Congress' grant of the trust lands. *See* N.M. Const., article XXI, § 9. Thus, the Enabling Act became part of New Mexico's fundamental law as if it had been incorporated directly into the New Mexico Constitution. *State ex rel. Interstate Stream Comm'n.* v. *Reynolds,* 71 N.M. 389, 397, 378 P.2d 622, 627 (1963). Section 2 of the Enabling Act requires the Federal Government's and the state's mutual consent to change the compact.

Twenty-three states, including the original thirteen states, do not have enabling acts. Another twenty-three states have enabling acts that give full power and authority to the states' legislatures to determine the manner of trust land disposal. Because of repeated abuses and fraud in disposal of trust lands that occurred in these states, Congress imposed stricter conditions for disposal of trust lands in New Mexico's and Arizona's enabling act. *Gladden Farms, Inc.* v. *State,* 129 Ariz. 516, 518, 633 P.2d 325, 327 (1981); *Murphy* v. *State,* 65 Ariz. 338, 351, 181 P.2d 336, 344 (1947). Senator Beveridge of Indiana, Chairman of the Congressional Committee on Territories in 1910, recommended rejecting the House bill proposed as the enabling act for Arizona and New Mexico, as it contained no safeguards for the disposal of trust lands. He supported the Senate bill, because it "provides that the land shall be sold and leased only after appraisement and advertisement. We have thrown conditions around land grants in the several states heretofore . . . but not so thorough and complete as this. . . ." 45 Cong. Rec. 8227 (1910).

Section 10 of the Enabling Act controls the manner in which New Mexico can dispose of trust lands. In pertinent part, it states:

> It is hereby declared that all lands hereby granted, including those which, having been heretofore granted to the said territory, are hereby expressly transferred and confirmed to the said state, shall be by the said state held in trust, *to be disposed of in whole or in part only in manner as herein provided* and for the several objects specified in the respective granting and confirmatory provisions, and that the natural products and money proceeds of any of said lands shall be subject to the same trusts as the land producing the same.
>
> *Disposition of any of said lands,* or of any money or thing of value directly or indirectly derived therefrom, for any object other than that for which such particular lands, or the lands from which such money or thing of value shall have been derived, were granted or confirmed, or *in any manner contrary to the provisions of this act, shall be deemed a breach of trust;* provided, however, that the state of New Mexico, through proper legislation, may provide for the payment, out of the income from the lands herein granted, which land may be included in a drainage district, of such assessments as have been duly and regularly estab-

> lished against any such lands in properly organized drainage districts under the general drainage laws of said state.
>
> No mortgage or other encumbrance of the said lands, or any thereof, shall be valid in favor of any person or for any purpose or under any circumstances whatsoever. *Said lands shall not be sold or leased, in whole or in part, except to the highest and best bidder at a public auction to be held at the county seat of a county wherein the lands to be affected, or the major portion thereof, shall lie,* notice of which public auction shall first have been duly given by advertisement, which shall set forth the nature, time and place of the transaction to be had, with a full description of the lands to be offered, and be published once each week for not less than ten successive weeks in a newspaper of general circulation published regularly at the state capital, and in that newspaper of like circulation which shall then be regularly published nearest to the location of such lands so offered; nor shall any sale or contract for the sale of any timber or other natural product of such lands be made, save at the place, in the manner and after the notice by publication thus provided for sales and leases of the lands themselves: provided, that nothing herein contained shall prevent said proposed state from leasing any of said lands referred to in this section for a term of five years or less without said advertisement herein required.
>
> *All lands, leaseholds, timber and other products of land before being offered shall be appraised at their true value, and no sale or other disposal thereof shall be made for a consideration less than the value so ascertained,* nor in any case less than the minimum price hereinafter fixed, nor upon credit unless accompanied by ample security, and the legal title shall not be deemed to have passed until the consideration shall have been paid.
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> * * * * * * *
>
> Every sale, lease, conveyance of contract of or concerning any of the lands hereby granted or confirmed, or the use thereof or the natural products thereof, not made in substantial conformity with the provisions of this act shall be null and void, any provision of the constitution or laws of the said state to the contrary notwithstanding.
>
> It shall be the duty of the attorney general of the United States to prosecute in the name of the United States and its courts such proceedings at law or in equity as may from time to time be necessary and appropriate to enforce the provisions hereof relative to the application and disposition of the said lands and the products thereof and the funds derived there from.

(Emphasis added). For a sale or lease of trust lands to be valid, Section 10 thus requires that the lands be sold or leased to the highest bidder at a public auction after notice of such auction is published at least once a week for ten successive weeks in a newspaper of general circulation. Any sale, lease, conveyance or contract pertaining to the trust lands that does not conform substantially with its provisions is null and void.

Article XIII, section 2 of the New Mexico Constitution provides: "The commissioner of public lands shall select, locate, classify and have the direction, control, care and disposition of all public lands, under the provisions of the acts of Congress relating thereto and such regulations as may be provided by law." The case law in New Mexico consistently has characterized the Commissioner as having substantial discretionary authority in managing the state's public lands. *Burgete* v. *Del Curto,* 49 N.M. 292, 295, 163 P.2d 257, 259 (1945); *State ex rel. Otto* v. *Field,* 31 N.M. 120, 143, 241 P. 1027, 1041 (1925). However, the Commissioner is subject to the restrictions of the Enabling Act, the New Mexico Constitution, and the statutes enacted pursuant thereto. *Application of Dasburg,* 45 N.M. 184, 191, 113 P.2d 569, 573 (1941). Therefore, express restrictions in these laws limit the Commissioner's discretion. He may not grant any rights to public lands contrary to law by circumvention, indirection or otherwise, regardless of motive or validity of any underlying justification. *Id.* The Supreme Court also has stated that the Commissioner is an agent for the state and has only those powers given by the constitution and laws of the state as limited by the Enabling Act. *State ex rel. Del Curto* v. *District Court of the Fourth Judicial Dist.,* 51 N.M. 297, 306, 183 P.2d 607, 613 (1947).

The dispositive question is whether the Commissioner has authority to exchange property under the Enabling Act. The Enabling Act does not use the word "exchange." Therefore, we must determine whether the drafters intended the word "sale" in the Enabling Act to encompass an "exchange."

The New Mexico Supreme Court has defined "sale" as the passing of the title to and possession of, property for money that the buyer pays or promises to pay. *Raton Wholesale Liquor Co.* v. *Besre,* 49 N.M. 121, 125, 158. P.2d 295, 297 (1945). Courts in other jurisdictions on many occasions have distinguished an "exchange" from a "sale" of real property. The Texas Court of Civil Appeals decided that an "exchange" occurred if one party passed property to another and received property in return without any agreed upon value to the property. *Griswold* v. *Tucker,* 216 S.W.2d 276, 278 (Tex. Civ. App. 1948). In an earlier case, the court determined that an exchange of land differs from a sale in that the parties place no fixed money price or value on either of the exchanged properties. *Liberto* v. *Sanders,* 248 S.W. 120, 121 (Tex. Civ. App. 1922). *See also Hawn* v. *Malone,* 188 Iowa 439, 443, 176 N.W. 393, 395 (Iowa 1920) (the test for distinguishing between a sale or an exchange of real property is a sale contains a fixed price); *Herring Motor Co.* v. *Aetna Trust & Savings Co.,* 87 Ind. 83, 89, 154 N.E. 29, 31 (Ct. App. 1926) (the transaction is an "exchange" where the parties transfer two properties and do not set a price for either parcel). In a Federal tax case, the District of Columbia Circuit Court of Appeals concluded that a transaction is an exchange if the parties set no price for the property. If they do, it is a "sale." *Gruver* v. *Commissioner,* 142 F.2d 363, 366 (D.C. Cir. 1944).

Under the terms of the Enabling Act, the Commissioner must appraise trust land prior to any disposition. The required appraisal sets a monetary value for the trust land to be conveyed. Consequently, any disposition of trust lands will be for an agreed upon value and will result in a "sale" rather than an "exchange." Because of the mandatory appraisal, it is not possible for the Commissioner to engage in "exchanges" of trust land for other land. The conveyances by the Commissioner will be "sales," and moreover must comply with the Enabling Act's requirements, including appraisal, advertisement and public auction with sale to the highest bidder.[1]

Furthermore, Section 19-7-9 NMSA 1978 restricts the manner of payment that the Commissioner can accept for the sale of property:

> Any state lands offered for sale by the commissioner of public lands shall be sold at the commissioner's discretion for cash or upon payment of one-tenth of the purchase price in cash and payment of the balance in thirty equal annual installments with interest on the principal balance at a rate to be set by the commissioner in the notice of auction pertaining to the particular sale in advance. . . .

This section requires the sale of property for cash or cash and installment payments with interest. It does not permit the acceptance of real property or other non-monetary, in-kind consideration.

This prohibition against exchanges of land is equally applicable to exchanges with another state agency. In 1981, the Supreme Court of Arizona considered a sale of trust land to a state agency in *Gladden Farms, Inc.* v. *State,* 129 Ariz. 516, 633 P.2d 325. In that case, the state land department sold state trust land to a state agency at the appraised value without advertisement, auction or bid. The petitioners, two private corporations, were willing to bid more than the appraised value for the land at a public auction.[2]

The respondents argued that *Arizona Highway Dept.* v. *Lassen,* 385 U.S. 458 (1967), had created an exception to the Enabling Act's requirements, allowing state agencies to acquire trust lands for public purposes without advertisement, auction and sale to the highest and best bidder. The respondents relied on the following language from *Lassen*:

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[1] New Mexico's Section 10, and Arizona's Section 28 originally were identical. The Arizona section has been amended to add the following: "The state of Arizona is authorized to exchange any lands owned by it for other lands, public or private, under such regulations as the legislature thereof may prescribe: Provided, that such exchanges involving public lands may be made only as authorized by Acts of Congress and regulations thereunder." No such amendment has been appended to New Mexico's Section 10.

[2] The court distinguished cases in Arizona and New Mexico that held that states could grant easements over trust lands for highways. *Grosetta* v. *Choate,* 51 Ariz. 248, 75 P.2d 1031 (1931); *State* v. *Walker,* 61 N.M. 374, 301 P.2d 317 (1956). It should be noted that even though the courts in Arizona and New Mexico agreed that easements over trust lands could be granted for highways, the New Mexico court in *Walker* insisted that the highway commission pay the fair appraisal value for the easements while the Arizona court required no such payment. The court in *Gladden Farms* distinguished the conveyance of an easement from the conveyance of a fee, emphasizing that the Enabling Act's restrictions did not apply to the conveyance of easements or rights of way for highways. The Arizona court cited *Arizona Highway Dept.* v. *Lassen,* 385 U.S. 458 (1967), where the United States Supreme Court rejected the argument that the restrictions in the Enabling Act applied where less than a fee interest was obtained: "The trust will be protected, and its purpose entirely satisfied, if the State is required to provide full compensation for the land it uses. We hold, therefore, that Arizona need not offer public notice or conduct a public sale when it seeks trust lands for its highway program." 385 U.S. at 465.

> The restrictions were thus intended to guarantee, by preventing particular abuses through the prohibition of specific practices, that the trust received appropriate compensation for trust lands. We see no need to read the Act to impose these restrictions on transfers in which the abuses they were intended to prevent are not likely to occur, and in which the trust may in another and more effective fashion be assured full compensation.

385 U.S. at 464. The Arizona Supreme Court refused to read *Lassen* so broadly:

> The United States Supreme Court held that for highway purposes, the state could obtain an easement or right of way without auction and sale. That is as far as the court went and no further. No cases have been cited to us and we have found none which hold that, as to the transfer of an interest in fee, the requirement of advertisement, auction and sale to the "highest and best bidder" is waived when the sale is to a state agency. As noted above, one of the purposes of the specific language in the Enabling Act was to assure that the trust lands generated the appropriate if not maximum revenue for the support of the common schools. The fact that the sale is to another state agency does not necessarily provide the protection to the trust lands that Congress intended. For example, an appraisal could be fairly made and the price received for public sale might still be higher than the appraised value.

129 Ariz. at 520, 633 P.2d at 329.

The reasoning in *Gladden Farms* is persuasive. Because Arizona shares a parallel Enabling Act with New Mexico,[3] its courts' decisions interpreting its Enabling Act should be given deference. The requirement of strict compliance with the Enabling Act's advertisement and auction provisions is additional authority that the Enabling Act prohibits an "exchange" of trust lands to a state agency without an appraisal. We therefore conclude that the Commissioner of Public Lands may not exchange state trust lands for lands of equal value held by private persons, local governing bodies, trust land beneficiary institutions, state agencies or Federal agencies other than the Interior Department.[4]

HAL STRATTON,
Attorney General.
LYN HEBERT,
Assistant Attorney General.

NEW MEXICO STATE UNIVERSITY,
July 26, 1990.

Hon. DALE BUMPERS,
Committee on Energy and Natural Resources, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR BUMPERS: I am pleased to give my support to the Trackways Project, an important scientific discovery in southern New Mexico. We all appreciate the effort of the many agencies and individuals that have worked to bring this discovery to the attention of the public. Measures taken by New Mexico State University in support of the Trackways Project are being coordinated through the office of Vice President Tombes, and he will provide you with specific information on New Mexico State University's interest in helping to advance the Trackways Project. I especially appreciate the work of Senators Bingaman and Domenici in their proposal to obtain Federal funding to preserve and develop this most important research discovery.

Sincerely,

JAMES E. HALLIGAN, *President.*

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[3] Sections 1 through 18 of the Enabling Act apply to New Mexico; sections 19 through 35 apply to Arizona.

[4] New Mexico has exchanged state lands for land owned by the Federal Government through the Secretary of Interior pursuant to article XXI, section 11 of the New Mexico Constitution and Section 19-2-12 NMSA 1978. We express no opinion on the legality of these exchanges.

THE UNIVERSITY OF NEW MEXICO,
Albuquerque, NM, July 26, 1990.

Hon. DALE BUMPERS,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Re: S. 2597, Amending the New Mexico Enabling Act to Clarify the State's Ability to Exchange Trust Lands.

DEAR SENATOR BUMPERS: The University of New Mexico strongly supports passage of S. 2597, pending before the Subcommittee on Public Lands. S. 2597 is intended to clarify the authority of the New Mexico Commissioner of Public Lands to exchange trust lands. There is a good deal of land held in trust by the State for the University of New Mexico, and we believe that the Commissioner's ability to manage this property will be greatly enhanced by removing any doubt about his ability to exchange trust lands for other lands of equal or greater value where this is in the interest of the affected beneficiary. We think that any property manager needs this flexibility and we feel comfortable with the protection for the beneficiaries built into S. 2597.

We would also be benefited by the provision making this bill retroactive in its application. In 1986 we exchanged property with the Land Office so that the University would own 640 acres of fee land in the center of a larger parcel of trust land near the city of Albuquerque. We will be greatly reassured by legislation which validates this and other prior exchanges which were carried out in good faith.

Thank you for your attention to this issue of importance to the University of New Mexico.

Sincerely,

RICHARD E. PECK, *President.*

Senator BINGAMAN. At this point, let us go ahead with the final two witnesses who are here to testify on S. 2684, and that is Dr. Ave Tombes, the Vice President for Research and Development at New Mexico State, and Mr. Jerry MacDonald, who is the field director of the paleozoic trackways project—if both of you could come up to the witness table.

We appreciate you being here, and I think probably the way to proceed is to ask Dr. Tombes to go ahead and testify as the Vice President for Research & Development for New Mexico State, and then after that call on Mr. MacDonald to testify as to the appropriateness and reasons for the legislation, or reasons why he believes it would be a useful thing to do.

Dr. Tombes.

Senator DOMENICI. Mr. Chairman, excuse me. I wonder if I could say to you, Doctor—I am not going to be able to stay. I am supposed to be at another meeting, and I will go to that one. I do very much support what Senator Bingaman is trying to do and I cosponsored the legislation with him, and I am very hopeful that it will turn out to be something very, very important for the people of this country and obviously for New Mexico State.

Mr. MacDonald, let me just say I have not had the privilege of meeting you, nor of visiting the site with you. I have read about you, and read about it. Senator Bingaman has told me about you and about it.

I could not make the hearing, and thus have not had an opportunity to either visit with you or visit the site, but I look forward to doing that and hope that I can do that with you. I am very proud of you. You ought to be very proud of what you have accomplished, and I thank you so much for being here today.

STATEMENT OF DR. AVERETT S. TOMBES, VICE PRESIDENT, RESEARCH AND DEVELOPMENT, NEW MEXICO STATE UNIVERSITY, LAS CRUCES, NM

Dr. **Tombes.** Senator Bingaman and Senator Domenici, it is a pleasure to be here. As a representative of New Mexico's land grant university I am pleased to appear at this hearing in support of S. 2684, the Prehistoric Trackways Study Act of 1990. Mr. MacDonald is to be commended for his enthusiasm in carrying out such research.

As well, New Mexico State University is gratified that the two of you have so aggressively pursued congressional funding in support of further expansion of paleontological research in southern New Mexico.

What follows is a brief summary of events to date. I will not read them. I will make reference to the fact that on the second page, the top paragraph, we indicate we will provide long-term storage for material that comes from this finding. We will work with all parties that are involved in making certain that the space is available and try to provide the space that is suitable for the volume that will be in need of storage.

The second paragraph on that page talks about the arrangements for laboratory and office facilities. We will try our best to provide those when they are called for and needed. The last paragraph on that page talks about the role of BLM and the university in developing a memorandum of understanding.

On the third page, that first paragraph talks about four points that probably, we think, should be in that memorandum of understanding, and it should talk about information about (1) condition of the specimens at the time they will be transferred to the storage area at NMSU, (2) storage conditions to be provided by the university for the material, (3) approximate duration of storage, and (4) provisions and procedures for access to the collection by NMSU and non-NMSU personnel.

Now, the last two paragraphs let me read. At the same time, New Mexico State University will be in a far better position to assist the trackways project if we can obtain additional information regarding the needs of the project. Given the limitations on NMSU's resources, it may not be possible for the university to respond to all of the requests that are received. We will, nevertheless, try to assist whenever possible.

Finally, Senator, it is abundantly clear that the university's ability to make a more active role in the project is severely curtailed by the absence of local expertise in vertebrate paleontology. Current budget constraints preclude the addition of such personnel in the near future.

We would be pleased if additional funding for such position or positions, even on a temporary basis, could be obtained as part of the Senator's effort to promote research in this area. We would make available this expertise to assist in this research.

I also have a letter from President Halligan that I will submit to you to be included in the documents.

[The prepared statement of Dr. Tombes follows:]

PREPARED STATEMENT OF DR. AVERETT S. TOMBES, VICE PRESIDENT, RESEARCH AND DEVELOPMENT, NEW MEXICO STATE UNIVERSITY, LAS CRUCES, NM

As a representative of New Mexico's land-grant University, I am pleased to appear at this hearing in support of S. 2684—the Prehistoric Trackways Study Act of 1990. Mr. McDonald is to be commended for his enthusiasm in carrying out such research. As well, NMSU is gratified that Senators Bingaman and Domenici have so aggressively pursued Congressional funding in support of the further expansion of paleontological research in southern New Mexico. What follows is a brief statement of the progress that has been made by NMSU toward greater support of this project.

At the July 6 hearing, Dean Thomas Gale indicated that NMSU would continue to support research efforts focusing on the trackways. In particular, this project has received considerable visibility as a result of public outreach programs at the University Museum (Kent Hall). NMSU reaffirms this support and is prepared to implement concrete steps in support of this project. After consulting with other NMSU staff, we have anticipated that the project will almost certainly need storage and laboratory facilities to better accomplish its stated goals.

Accordingly, arrangements have been made since the July 6th hearing to provide long-term storage at New Mexico State University for trackway specimens. NMSU is committed to working with all parties to insure that these collections remain in the region from which they were recovered. We anticipate that any additional materials recovered from this locality can be stored at NMSU until the facility proposed as part of S. 2684 is selected and fully developed.

In addition, NMSU has almost finalized arrangements for laboratory and office facilities for use by researchers affiliated with the Trackways Project. I anticipate that these arrangements can be completed within the next few weeks. This underscores the degree of enthusiasm about this project that is common at the university.

There remains one issue that needs to be addressed before NMSU can render further assistance to the Trackways Project. It must be remembered that these fossil specimens have been recovered from Federal lands and, in fact, legal ownership resides with the Bureau of Land Management. If NMSU is to provide storage facilities for these specimens, it is necessary for the BLM and NMSU to begin to develop a Memorandum of Understanding (MOU) whereby these specimens can be transferred to the university for long-term storage.

This step, while not a significant impediment to further cooperation on this project, would be necessary no matter what institution might provide storage. The details of these memoranda would obtain, among other things, information about the condition of the specimens at the time they would be transferred to NMSU, storage conditions to be supplied by NMSU, approximate of storage, provisions, and procedures for access to the collections by NMSU and non-NMSU personnel, and so forth.

At the same time, NMSU will be in a far better position to assist the Trackways Project if we can obtain additional information regarding the needs of the project. Given limitation on NMSU's resources, it may not be possible for NMSU to respond to all of the requests that are received. We will, nonetheless, try to assist wherever possible.

Finally, it is abundantly clear that the university's ability to take a more active role in the project is severely curtailed by an absence of local expertise in vertebrate paleontology. Current budget constraints preclude the addition of such personnel in the near future. We would be pleased if additional State funding for such positions, even on a temporary basis, could be obtained as part of the Senators' efforts to promote research in this area. We would, of course, make available this expertise to assist in implementing the provisions of S. 2684.

Senator BINGAMAN. Thank you very much for the testimony. We will include Dr. Halligan's letter and your full testimony and we appreciate the efforts you have made to be here and the support that you are providing.

Let me also indicate, before I call on Mr. MacDonald, that we have the letter here from Mr. Nicholas Hotton, III, who is the research curator for the Department of Paleobiology with the Smithsonian Institution, the Museum of Natural History, and we will include his statement of support for what Mr. MacDonald is doing and the research that is going on there for the legislation. We will include that in the record as well.

[The letter referred to follows:]

SMITHSONIAN INSTITUTION,
NATIONAL MUSEUM OF NATURAL HISTORY,
Washington, DC.

MR. CHAIRMAN: I am pleased to testify in support of S. 2684, as I think that the Robledo Hills trackway locality is of great scientific significance.

From what I've seen of it, both on the ground and in photographs sent me by Mr. Jerry MacDonald, the Robledo Hills trackway locality is probably the best of its kind of Permian Age. The only one that can be compared with it is in the world-famous Coconino Sandstone, in the Grand Canyon which however includes mostly tracks of small animals. The Robledos tracks, by contrast, include large as well as small animals and probably represent all major taxonomic categories of Lower Permian tetrapods otherwise known only from bones. The Robledos quarry also yields tracks of otherwise unknown arthropods, and good impressions of plants, each of which will provide invaluable information regarding the environment of the time.

Permian fossils, bones and tracks alike, are about 270 million years old, and they represent our first detailed view of terrestrial life not too long after it had emerged from the water. There are older terrestrial fossils from various places in the world but none known in such detail over such a broad area—bones of these animals are found all the way from Arizona to central Texas. My own specialty is bones, which tell us what the animals looked like, and with luck where they died and how they came to be preserved. Trackways, however, tell us what they were actually doing during life—each one is a little snapshot of what some Permian reptile or amphibian was up to on one day in the far-distance past. Both these lines of evidence, bones and tracks together, are essential for proper scientific qrasp of what life was like so long ago. However, I think that trackways offer a much more dramatic illustration of such life, and will be correspondingly more impressive to the public if they have controlled access to the Robledos locality.

My testimony would not be complete without reference to the work by Mr. Jerry Paul MacDonald at the Robledos locality, work which has been executed in a thoroughly professional manner. The trackways that he has collected thus far are fully documented as to stratigraphic position and relationship to one another. The quality of their curation assures that they can be related to tetrapods known from bones, and their condition and continuity are of incalculable value as indicators of the living activities of such animals. Mr. MacDonald deserves full credit for this work, which he initiated and has carried out virtually single-handed.

I do hope that scientific work may continue at this locality whatever its ultimate disposition, because results to date have already attracted attention in scientific circles. A noted footprint expert, Dr. James O. Farlow, of the University of Indiana, has a student of his engaged in field work with Mr. MacDonald. This young man, a PhD candidate, is studying sedimentology and is interested in the role of footprints as indicators of sedimentary processes. I am very enthusiasticc about this link because of the great variety of sedimentary features that are evident in the Robledos occurrence, and have felt all along the need for a sedimentologist to work on them.

In conclusion, I must express my appreciation of the cooperation afforded by Mr. Jim Fox, of the Las Cruces office of BLM. This cooperation has provided encouragement to a talented young man when he needed it most, and in doing so has given paleontology a rich source of data that will continue to be useful for generations to come.

NICHOLAS HOTTON III, PhD,
Reserch Curator, Department of Paleobiology.

Senator BINGAMAN. Jerry, we are very pleased to have you here. We are pleased to have all the work you have done and the great discovery that you have made, and why do you not go ahead and describe what you believe we need to know about the subject.

STATEMENT OF JERRY PAUL MacDONALD, FIELD DIRECTOR, PALEOZOIC TRACKWAYS PROJECT, SMITHSONIAN INSTITUTION, LAS CRUCES, NM

Mr. MACDONALD. Three years ago I made a discovery of a vast array of fossilized footprints in the Robledo Mountains near Las

Cruces. The footprints were made by animals that lived in the area 280 million years ago, making them some of the oldest fossil tracks in the world.

Although the general area was known for giving up an occasional footprint here or there for the last half-century, the region was never extensively studied to ascertain the productivity of the footprint outcrops. Remarkably, what is now considered to be the best non-dinosaur trackway locality in the world was not preserved in some desolate or obscure region of the west, far from human habitation or activity, but only 5 miles from the most populated region in the New Mexico-West Texas area.

There are a number of reasons why the productivity of the area lay dormant for so long, and those reasons were presented to the Senate in Las Cruces at the field hearings. It is important to note, however, that the discovery of sensational footprints, coming as it did just 3 short years ago, strongly contradicted a very extensive prior history of the area and the experiences of literally dozens of scientists and researchers who knew and studied the reason.

As a result, while 3 of the top 5 American museums—The Smithsonian Institution, the Carnegie Museum in Pittsburgh and the Natural History Museum of Los Angeles County, were thrilled when hearing of the discovery and contributed seed money for me to continue my excavations.

Local and statewide support in New Mexico was virtually nonexistent. As a result, Senator, it has taken a dramatic toll on my physically and emotionally in this particular work, but I want to mention for the record that the Smithsonian and the Carnegie and the L.A. county museum should be commended for their anticipation of the possible potential of the site early on, when all I had was basically reconnaissance material.

In the 3 years that have passed since I found what I call the Mother Lode, I have excavated well over 100 trackways. Preserved on these trackways are the daily activities of at least 50 different vertebrate animals. The Carnegie estimates that at least half of the census are new, undiscovered species.

Included in the collection are the tracks of nearly every taxonomic group from the Permian Era known from bones. Included are the first extensive trackways of carnivorous, predatory reptiles such as Dimetrodon, and big, lumbering amphibians like Eryops as well as the trails of a variety of mysterious, unclassified animals.

Never before has such a broad assemblage of animals been found together, but even more impressive is the preservation of their numerous encounters, social habits and adventures. Also preserved in stone are the tracks and trails of an incredible variety of insects and arthropods that paleontologists know virtually nothing about.

Also preserved are the dramatic encounters of vertebrates with invertebrates—a fight, perhaps, between a small reptile and its quarry, a 12-inch long centipede, or the deadly antics of a 12-foot Pelycasaur and a soon-to-be-squashed cockroach. The battles of vertebrate animals among themselves is also preserved, like still photographs frozen in time.

Also etched in stone is the weather of the region, perfect raindrop impressions punctuate the layers and are often associated with a troop of animals running for cover.

Then there are the plants. Beautiful branches of conifers, some 5 feet long, lay prostrate in the mud, victims of a primeval wind storm. Delicate seed ferns, horse-tail weeds and semitropical plants can often be seen in association with wanderings of animals.

At least one layer preserves a remnant of a fossil forest, with plant debris covering much of the ground, often with the tracks of animals who have made their way across the surface. To date, nearly 2-dozen different plants species show that the barren Robledo Mountains was a steamy, semi-tropical garden of great beauty.

In nearly every case, these fossils are virtually perfect in preservation, and to the untrained the footprints almost look like they were made after yesterday's thunderstorm, but the facts are undeniable. The footprints are inside the mountains, or more specifically, actually make up the foundation of the mountains.

It staggers the imagination to think that each footprint layer was once perfectly horizontal, and that they formed the boundary of an ancient shallow sea, that these numerous mud flats were laid at sea level, marking like pages of a book the daily record of activity of foraging animals and insects whose adventures began at low tide. But now these layers of mud are 4,000 feet above sea level.

More significantly, they are nearly 1,000 miles from the shores of the oceans we know today. The mud is now mud-stone, the layers are now sloped 18 degrees and tilted 12 degrees from horizontal. The unceasing march of millennia have eroded away nearly all evidence of this ancient shoreline, which is now preserved only in small, scattered outcrops at various levels within the mountains.

Even though modern science has explained footprint preservation to everyone's satisfaction, the mystique of these beautiful and mysterious prints still allure and fascinate us all. Can there be a more thrilling experience than to uncover the footprints of an animal that no other human has ever seen, and to imagine that right on that spot you are standing 280 million years ago, a totally unknown animal was also standing on that same spot?

That these marvelous footprints could survive at all, intact and in such perfect condition for such sweeping distances defies logic. Their almost incomprehensible age evokes a humble reverence for the selection and mysterious protection this earth has employed in their behalf.

But today, these footprints are in trouble not only from the unstoppable forces of nature but also from the ravages of man. Already, a rich fossil plant layer preserving much of the semitropical environment these exotic animals inhabited is totally destroyed, their remnants now comprising the floors in a half-million dollar house in downtown Las Cruces, or in the exterior walls of homes, businesses and even the university. Already, small footprint slabs can be seen within the rock walls of suburban Las Cruces, and some collectors use trackway debris to line their fireplaces.

Such exploitation of fossil footprints, or any fossil occurrence, is not unique, and even in the Robledo Mountains it can be excused. We just did not know better. We had no idea of their incalculable value to science and history. But we know better now. We must take strong action to protect a valuable natural resource that has miraculously survived into our lifetimes.

Why should these trackways demand our attention? First of all, the Robledo Mountains preserves intact a 280-million-year-old budding, expanding, vivacious community of plant and animal life that modern man knows very little about. These animals, who at this time have now conquered the coastal margins of the world, are now venturing outward in a vibrant expansion that would soon cover the entire globe.

They carry in their bodies the formula for ever-advancing life forms. Their fossils preserve in stone the indomitable will to survive and adapt to any and every challenge. Such an example of vitality is crucial to the man of 20th-Century science as he grapples with major ecological and environmental problems and changes.

Unknown or little understood animals, plants, insects and skeletal remains lie preserved together in just over a square mile of earth, their powerful will to survive exemplified in the fact that their life traces are now being observed by life forms that did not exist until these animals had been dead for over 0.25 billion years.

Senator BINGAMAN. Let me interrupt. They have just called another vote, and it is half-way over. I think what I need to do is run over and do that, and then return, and that time go ahead with the rest of your testimony.

We will stand in recess. I should be back in 6 or 8 minutes.

Dr. Tombes, I understand you have to catch a plane. We will excuse you to do that, and we appreciate your being here.

[Recess.]

Senator BINGAMAN. I apologize. That took longer than we thought. They called a couple of votes instead of just the one. Why do not you go ahead, Jerry, with the rest of your testimony, wherever you were there?

Mr. MACDONALD. The second reason we need to understand and preserve this long-lost community is because, although the spark of life they inherited continued unabated from their time to the present, all of those animals are now long extinct. These animals are so different from anything alive today that nearly no contemporary examples can be found. We can compare Dimetrodon to a big lizard or Eryops to a stocky alligator, but such superficial comparisons collapse under the scrutiny of the trained scientist.

These animals, long separated from life, are no less important than finding a lost and forgotten civilization of humankind. These ancestral animals were locked on the geohistorical time line of life for over 50 million years. Man, on the other hand, jumped on board no more than 3 million years ago. The obvious strength of endurance that these long-lost animals possessed is an enviable example of staying power for contemporary man.

Yet, the ominous fact is that extinction can visit any species, regardless of "seniority." The extinctions that brought an end to the Paleozoic Age are the most dramatic and wide ranging of all extinctions known to science. Nearly 95 percent of all life on Earth abruptly died. It is sobering indeed for man to contemplate, as extinction is a consistent occurrence throughout the long history of life on Earth, and it would be impertinent for man to think he is impervious to such terrible termination. Can man rule the Earth for 50 million years, as long as these giant reptiles? Can man even preserve himself in any capacity for so long a time?

I would like to briefly state what I think eventually the area could be designated. The suggested similarity of the Robledo track site with Dinosaur National Monument is an excellent one. Though dinosaur bones are found in many places throughout the United States, such a phenomenal concentration of skeletal remains within such easy reach of scientists and the public made the National Monument designation logical. There, in one spot, was a concentrated representative example of everything great about the United States' rich fossil history with dinosaurs.

Similarly, though tracks are not as plentiful as dinosaur remains, there are a few localities in the United States where tracks are fairly common, especially dinosaur tracks. Though non-dinosaur tracks are less common, there are still several good localities in North America, specifically in Mississippi, Nova Scotia, Arizona, and Southern Colorado. Although they are good there, they are not the kind of rich deposit a paleontologist dreams of.

The Robledo trackway deposit is as rich in tracks and trackways as Dinosaur National Monument is in dinosaurs. In the Robledos, we have a concentration of tracks that is indeed representative of the best of several lesser sites in North America and the world. Here, in one spot, are preserved the life traces of dozens upon dozens of animals, many new, as well as plants, insects, and even skeletal remains. There just simply is not any better pre-dinosaur track site to be found anywhere in the world.

I want to introduce very briefly a couple of quotes from some other scientists.

David Berman, curator of vertebrate fossils at the Carnegie Museum, in 1988, said:

> After considerable discussion with MacDonald, examination of photographs and specimens, and visits to his sites in New Mexico, it is my estimation that the deposit is one of the most outstanding fossil trackway localities ever discovered for vertebrate and invertebrate animals in terms of quality, quantity, and variety of tracks.

The next year, Berman said this:

> MacDonald's energies will certainly apprise the paleontological community of the full research potential of this sort of study in the Abo formation of the Las Cruces region. To date, MacDonald's collection, with its accompanying data, constitutes an invaluable scientific discovery. In quality, quantity, and diversity, it surpasses anything that I have seen reported.

Nicholas Hotton said in 1987:

> MacDonald's collections are most impressive. The quality of the material is excellent, and the locality must at least be as rich as any Late Paleozoic footprint locality thus far reported, including the classic ones of the Grand Canyon. The exploitation of the Las Cruces locality will prove of great scientific value and if properly cared for, MacDonald's material will remain of value to the scientific community for a long time to come.

Mary Dawson, Chairman of Earth Sciences at the Carnegie Museum said, in 1989:

> We are most enthusiastic about the progress of MacDonald's project on the fossil trackways of New Mexico. We have received glowing reports about his discoveries. The information he has gathered is of very high scientific importance. Many of the animals found in the area will come to be known only by their footprints. This discovery will provide the only record to the existence of many new species. The Carnegie Museum is thrilled to aid in the work.

The Natural History Museum of Los Angeles County released a press release on the discovery. Craig Black, director of the museum said:

> Scientists who have viewed the specimens excavated so far believe the site to be one of the richest ever discovered in terms of quality, quantity, and variety of tracks. We are pleased that the National History Museum of Los Angeles County will be able to participate in developing this significant scientific discovery.

The official publication of the American Geological Institute, in their science journal, Geotimes, stated:

> In isolated, barren arroyos west of Las Cruces, New Mexico, Jerry P. MacDonald is excavating some of the best fossil trackways in the world. These finds, from 280-million-year-old redbeds in the Robledo Mountains have already revised thinking about the abundance and diversity of life in the early Permian. When the excavations were brought to the attention of other paleontologists, the reaction was predictably enthusiastic.

Science World Magazine says:

> A dazzling new discovery of fossil footprints left by early reptiles, amphibians, and insects. Scientists may have their best clues ever as to how animals lived during the Permian period, 280 million years ago.

The British journal, Nature, in association with the Times of London, said:

> MacDonald has been rewarded with the discovery of one of the world's richest fossil trackways. From what has been revealed so far, it is likely that the trackways will contain the footprints of hundreds of creatures that lived 280 million years ago. Even the weather has been fossilized.

And there are more than 50 such statements like that. The best pre-dinosaur trackway locality, at least up until the time that of the Robledo deposit, was the Permian trackways of the Coconino Sandstone formation within the Grand Canyon, which were studied by Smithsonian paleontologist C.W. Gilmore from 1927 to 1929. These tracks, now housed at the Smithsonian Institution, were used as a standard to evaluate the significance and productivity of the Robledo assemblage. As you are now aware, the revised opinion is that the Robledo locality is better than the Grand Canyon's in terms of the quality, quantity, and variety of tracks.

Needless to say, the Permian trackways of the Grand Canyon indirectly survive today in part because of the protection national park status has afforded them by the U.S. Government.

What the Robledo Mountains lack in beauty compared to the Grand Canyon, it makes up for in the haunting beauty and abundance of these ancient trackways.

Additionally, the Robledo deposit is much easier to exploit educationally and scientifically than the Grand Canyon trackways, especially in terms of the relative ease in comparative terms of excavation of the slopes. Furthermore, I have proven that the lateral continuity afforded by the trackways' sediments in the Robledos gives scientists the opportunity to expose vast stretches of trackways that could extend hundreds of feet. This is not possible with the Grand Canyon tracks.

For the above reasons, I respectfully request designation of the Robledo trackway deposit as a national monument so that all the authority and respect that such a designation carries it can be enforced. While it is true that the number and variety of trackways seems almost endless within the proposed study area, the deposit itself is fearfully small, just over 1 square mile.

Considering the past history of the area in terms of indiscriminate collecting, quarrying, and the fact of a major trackway theft that occurred during the present excavation, as well as numerous unsupervised trips and activity that increased by the week, a failure to adequately protect the area could result in tragic losses of irreplaceable material, I believe that the suggestion by a few that the Robledo area be designated as a national natural landmark is inadequate for such a rare and vulnerable natural resource. To date there are well over 500 such designations, but I am aware of only two stellar world-class, pre-dinosaur trackway sites, the aforementioned tracks protected in the Grand Canyon National Park, and the unprotected Robledo Mountain trackways of New Mexico.

Concerning appropriations for the bill, I want to mention just quickly that though there has been a lot of scientific study in the Robledos, scientists at the Smithsonian, Carnegie, and myself have never denied that. The scientific research has been extensive, but there have been no studies on the paleontology of the area, no studies on the paleobotany, no studies on invertebrate trackways or vertebrate trackways, and no studies to correlate the sedimentology of the tracks with the area. So the bill definitely is needed in terms of funding new research in addition to funding myself to continue the excavation.

Obviously such a bill and the studies that would result from it would form a very strong and powerful basis for the formation of a national monument. Without the experts, world-renowned experts in many different fields studying this thing, the research potential would be inadequate at many points. I do not believe that Congress would be adequately apprised of the potential in many different subdisciplines in this area.

Unquestionably, the area is attracting a lot of attention, not only locally, but worldwide. The potential is there for a very powerful national monument that the State and Nation would be very proud of.

In conclusion, the Prehistoric Trackways National Monument will undoubtedly be a source of local, State, and national pride as a showcase for a long-lost community of courageous life forms. A lasting legacy of such a monument will be renewed commitment to try our best to protect this fragile planet and all of the marvelous creatures it contains.

Thank you, Senator.

[The prepared statement of Mr. MacDonald follows:]

PREPARED STATEMENT OF JERRY PAUL MACDONALD, FIELD DIRECTOR, PALEOZOIC TRACKWAYS PROJECT, SMITHSONIAN INSTITUTION, LAS CRUCES, NM

A DESCRIPTION OF THE SIGNIFICANCE OF THE ROBLEDO MOUNTAIN FOSSIL FOOTPRINTS OF SOUTHERN NEW MEXICO

Three years ago I made a discovery of a vast array of fossilized footprints in the Robledo Mountains, near Las Cruces, in southern New Mexico. The footprints were made by animals that lived in the area 280 million years ago, making them some of the oldest fossil tracks in the world.

Although the general area was known for giving up an occasional footprint here or there for the last half-century, the region was never extensively studied to ascertain the productivity of the footprint outcrops. Remarkably, what is now considered to be the best non-dinosaur trackway locality in the world was not preserved in some desolate or obscure region of the west, far from human habitation or activity, but only five miles from the most populated region in the New Mexico, West Texas area.

There are a number of reasons why the productivity of the area lay dormant for so long, and those reasons were presented to the Senate in Las Cruces at the field hearings on July 6th of this year. It is important to note, however, that the discovery of sensational footprints, coming as it did just three short years ago, strongly contradicted a very extensive prior history of the area, and the experiences of literally dozens of scientists and researchers who knew and studied the region. Until 1987, no one just kept digging, and digging, and digging.

As a result, while three of the top five American museums (the Smithsonian Institution, the Carnegie Museum in Pittsburgh, and the Natural History Museum of Los Angeles county) were thrilled when hearing of the discovery, and contributed seed money for me to continue my excavations, local and statewide support in New Mexico was virtually non-existent. Fortunately, the kind support these museums gave me early-on is the primary reason we are now presenting this discovery to the Congress of the United States of America. This early support allowed me to prove conclusively the astonishing significance of these footprints in the Robledo Mountains.

In the three years that have past since I found "the motherlode", I have excavated well over one-hundred trackways, a trackway being a series of at least five consecutive footprints. Preserved on these trackways are the daily activities of at least 50 different vertebrate animals (animals with a backbone) The Carnegie estimates that at least half of the census are new, undiscovered species.

Included in the collection are the tracks of nearly every taxonomic group from the Permian Era known from bones. Included are the first extensive trackways of carnivorous predatory reptiles such as Dimetrodon, and big lumbering amphibians like Eryops, as well as the trails of a variety of mysterious, unclassified animals such as Diadectes. In all, five major subclasses of terrestrial animals—three among the early reptiles, and two among the amphibians, are preserved together, breaking down into eleven distinct orders; each one important in their own right as ancestral creatures now long extinct. Never before has such a broad assemblage of animals been found together, but even more impressive was the preservation of their numerous encounters, social habits, and adventures.

Also preserved in stone are the tracks and trails of an incredible variety of insects and arthropods that paleontologists know "virtually nothing about." The delicately imprinted trails of centipedes, scorpions, cockroaches, silverfish, snails, and an assortment of bugs and beetles dot the layers, as do the pinpoint landings and takeoffs of 2-foot-long dragonflies, and other flying insects. Also preserved are a variety of marine insects and arthropods, such as horseshoe crabs, crustaceans, trilobites, and water bugs, as well as the fluttering and flapping of the fins of fish moving through shallow water.

Yet also preserved are the dramatic encounters of vertebrates with invertebrates. A fight between a small reptile and it's quarry—a twelve-inch long centipede. Or the deadly antics of a 12 foot Pelycosaur and a soon to be squashed cockroach. The battles of vertebrate animals among themselves is also preserved like still photographs frozen in time.

Also etched in stone is the weather of the region. Perfect raindrop impressions often punctuate the layers, and are often associated with a troupe of animals scurrying for cover. Sand ripples formed by prevailing winds are preserved that visually cannot be distinguished from the present day sand ripples found at White Sands National Monument 70 miles away. Water ripples from gentle wave action preserve the trails of animals wandering in and out of water. Mud cracks and puddles are also preserved everywhere.

And then there are the plants. Beautiful branches of conifers, some five feet long, lay prostrate in the mud, victims of a primeval windstorm. Delicate seed ferns, horsetail reeds, and semi-tropical plants can often be seen in association with the wanderings of animals. At least one layer preserves a remnant of a "forest floor", with plant debris covering much of the ground, often with the tracks of animals who made their way across the surface. To date, nearly 2-dozen different plant species show that the barren Robledo mountains were once a steamy, semi-tropical garden of great beauty.

In nearly every case these fossils are virtually perfect in preservation, and to the untrained, the footprints almost look like they were made after yesterdays thunderstorm. But the facts are undeniable. The footprints are inside the mountains, or more specifically, actually make up the foundation of the mountains. It staggers the imagination to think that each footprint layer was once perfectly horizontal, and that they formed the boundary of an ancient shallow sea that these numerous mud flats were laid at sea level, marking, like pages of a book, the daily record of activity of foraging animals and insects whose adventures began at low tide.

But now, these layers of mud are four-thousand feet above sea level, and more significantly, nearly one-thousand miles from the shores of the oceans we know today. The mud is now mudstone. The layers are now sloped 18 degrees and tilted 12 degrees from horizontal. The unceasing march of millennia have eroded away nearly all evidence of this ancient shoreline, which is now preserved only in small, scattered outcrops at various levels within a few mountains.

Before I started my work, no trackways lay exposed on a canyon floor, waiting for someone to stumble over them. These tracks were deeply hidden in layers that built up over millions of years into the twisted mountain sediment that man now sees.

Although footprint preservation is one of the least understood processes of fossilization, it is also a fairly common occurrence. Yet uncovering the Robledo trackways is almost as mysterious as the tracks themselves. Digging into the mountain to expose a layer that shows no hint of footprints seems futile, yet the work continues by prying that barren layer out of its eternal grave, only to lay it on it's side. The work of splitting that huge rock down the middle borders on the insane to most observers, but then the rock pops open like a champagne bottle, to reveal it's hidden treasures. Like opening a tomb sealed shut for a thousand times ten-thousand years, the incredible happens. There inside are beautiful footprints, the footprint casts themselves, (which preserve the actual surface the animal walked over), and also an exact opposite mold, (the secondary tracks which formed as the overwash filled in those footprints). To see this a dozen or more times a day is a stunning experience even for the most seasoned scientist.

Even though modern science has explained the phenomenon to everyones satisfaction, the mystic of these beautiful and mysterious prints still allures and fascinates us all. Can there be a more thrilling experience than to uncover the footprints of an animal that no other human has ever seen, and to imagine that right on the spot you are standing, 280 million years ago a totally unknown animal was also standing on that exact spot?

That these marvelous footprints could survive at all intact and in such perfect condition for such sweeping distances defies logic. Their almost incomprehensible age evokes a humble reverence for the selective and mysterious protection this earth has employed in their behalf.

But yet today, in the waning years of the 20th century, these footprints are in trouble, not only from the unstoppable forces of nature, but also from the ravages of man. Already, a rich fossil plant layer, preserving much of the semi-tropical environment these exotic animals inhabited, is totally destroyed, their remnants now comprising the floors in a 1/2 million-dollar house in downtown Las Cruces, or in the exterior walls of homes and businesses in the area. Already, small footprint slabs can occasionally be seen within the rock walls of suburban Las Cruces, and some collectors used trackway debris to line their fireplaces.

Such exploitation of fossil occurrences is not unique, and even in the Robledo Mountains can be excused we just didn't know better. We had no idea of their incalculable value to science and history. But we know better now. We must take strong action now to protect a valuable natural resource that has miraculously survived into our lifetimes.

And why should these trackways demand the attention of such an august body of national leaders and legislators? Why should evidence of life 280 million years ago have any bearing upon 20th century man?

First of all, the Robledo mountains preserve intact a 280 million year-old budding, expanding, vivacious community of plant and animal life that modern man knows very little about. These animals, who at this time have now conquered the coastal margins of the world, are now venturing outward in a vibrant expansion that would soon cover the entire globe. They carry in their bodies the formula for ever-advancing life forms. Their fossils preserve in stone the indomitable will to survive and adapt to any and every challenge. Such an example of vitality is crucial to the man of the 20th century and beyond, as he grapples with major ecological and environmental problems and changes.

Unknown or little-understood animals, plants, insects, and skeletal remains lie preserved together in just over a square-mile of earth; Their powerful will to survive exemplified in the fact that their life traces are now being observed by life forms that did not exist until these animals had been dead for over 1/4 of a billion years. In the name of all that is sacred and honorable, these ancestral creatures deserve our study and respect.

Related to this is the exciting fact that in this small square-mile of ancient rock, an unbroken daily cycle of tidal surges and retreats can be seen. Day after day, as the tides sweeped across the face of the sand, an opera of life and death played out; each animal eating it's quarry, only to be eaten itself by a more robust beast; everything eating and being eaten, until the banquet ended with the hearty appetite of the top predators, the ravenous Pelycosaurs. To find an unbroken record of the life histories of such a vibrant ancestral community, stacked inch by inch for 10 thousand uninterrupted years is like finding a complete encyclopedia set 280 million years old. No one need describe how important such an encyclopedia in stone would be to paleontologists or others who attempt to accurately reconstruct the past. Such a reference is of incalculable value.

A second reason we must understand and preserve this long-lost Permian community is because, although the spark of life they inherited continued unabated from their time to the present, all of those animals are now long extinct. These animals are so different from anything alive today, that nearly no contemporary examples can be found. We can compare Dimetrodon to a big lizard with a sail on it's back, or Eryops to a stocky alligator, but such superficial comparisons collapse under the scrutiny of the trained scientist.

These animals, long separated from life, are no less important than finding a lost and forgotten civilization of humankind. These ancestral animals were locked on the Ceo-historical time line of life for over 50 million years. Man, on the other hand, jumped on board no more than 3 million years ago. The obvious strength of endurance that these long lost animals possessed is a enviable example of staying power for contemporary man.

Yet, the ominous fact is that extinction can visit any species, regardless of "seniority". The extinctions that brought an end to the Paleozoic Age are the most dramatic and wide-ranging of all extinctions known to science. Nearly 95% of all life on earth abruptly died. It is sobering indeed for man to contemplate, as extinction is a consistent occurrence throughout the long history of life on earth, and it would be impertinent for man to think he is impervious to such terrible termination. Can man rule the earth for 50 million years—as long as these giant reptiles? Can man even preserve himself in any capacity for so long a time?

REASONS FOR NATIONAL MONUMENT STATUS FOR THE ROBLEDO MOUNTAIN TRACKWAYS

The suggested similarity of the Robledo track site with Dinosaur National Monument is an excellent one. Though dinosaur bones are found in many places throughout the United States, such a phenomenal concentration of skeletal remains within such easy reach of scientists and the public made the National Monument designation logical. There, in one spot, was a concentrated representative example of everything great about the United State's rich fossil history with dinosaurs. In this one site alone, was the dinosaur hunters dream come true, as well as the dinosaur lovers' heaven.

Similarly, though tracks are not as plentiful as dinosaur remains, there are a few localities in the United States where tracks are fairly common, especially for dinosaur tracks. The Connecticut Valley dinosaur footprint assemblage and the Glen Rose trackways in Texas being the most prominent examples.

Though non-dinosaur tracks are less common, there are still several good localities in North America, specifically in Mississippi, Nova Scotia, Arizona, and Southern Colorado. Though they are good, they are not the kind of rich deposit a paleontologist dreams of.

The Robledo trackway deposit is as rich in tracks and trackways as Dinosaur National Monument is in dinosaurs. In the Robledos, we have a concentration of tracks that is indeed representative of the best of several lesser sites in North America and the world. Here, in one spot, are preserved the life traces of dozens upon dozens of new and exciting animals, as well as plants, insects, and even skeletal remains. One could spend their whole life in the Robledos and still come away with a broad and formidable understanding of the Permian Period. There just simply isn't any better pre-dinosaur trackway site to be found anywhere else in the world.

The best pre-dinosaur trackway locality, at least up until the time the Robledo deposit was adequately explored, was the Permian trackways of the Coconino sandstone formation within the Grand Canyon, which were studied by Smithsonian Paleontologist C.W. Gilmore from 1927–29. These trackways, now housed at the Smithsonian Institution, were used as a standard to evaluate the significance and productivity of the Robledo assemblage. As you are now aware, the revised opinion is that the Robledo locality is better than the Grand Canyons in terms of the quality, quantity, and variety of tracks.

Needless to say, the Permian trackways of the Grand Canyon indirectly survive today in part because of the protection "National Park" status has afforded them by the United States Government. What the Robledo Mountains lack in beauty compared to the Grand Canyon, it makes up for in the haunting beauty and abundance of these ancient trackways.

Additionally, the Robledo deposit is much easier to exploit educationally than the Grand Canyon trackways, especially in terms of the relative ease (in comparative terms) of excavation of the slopes. Furthermore, I have proven that the lateral continuity afforded by the tidal sediments in the Robledos gives scientists the opportunity to expose vast stretches of trackways that could extend hundreds of feet. This is not possible with the Grand Canyon tracks.

For the above reasons, I respectfully request the immediate designation of the Robledo trackway deposit as a National Monument, so that all of the authority and respect that such a designation carries with it can be in force. While it is true that the number and variety of trackways seems almost endless within the proposed study area, the deposit itself is fearfully small, just over one square mile.

Considering the past history of the area in terms of indiscriminate collecting, quarrying, and the fact of a major trackway theft that occurred during the present excavation, (September, 1988), as well as numerous unsupervised trips and activity that increase by the week, a failure to adequately protect the area could result in tragic losses of irreplaceable material.

I believe that the suggestion by a few that the Robledo area be designated as a National Natural Landmark is inadequate for such a rare and vulnerable national resource. To date there are well over 500 such designations, but I am aware of only two stellar world-class pre-dinosaur trackway sites, the aforementioned tracks protected in Grand Canyon National Park, and the unprotected Robledo Mountains Paleozoic Trackways of New Mexico.

ROBLEDO TRACKWAY FUNDING APPROPRIATIONS

Though it is true that the Robledo Mountains have been studied extensively, the study mentioned in this bill is designed to study the footprints and fields relating to the footprints. No studies have ever been done on this aspect of the Robledos other than my solitary endeavors. Some of the money requested in this bill is for the funding of specialists such as paleobotonists (for fossil plant studies) invertebrate paleontologists (for insect and arthropod work), sedimentologists and paleoecologists, (for understanding the depositional environment the tracks were formed in), ichnopaleontologists (to study the footprints themselves) as well as funding for me to continue excavating. Such a study is not a rehash of earlier work but will be totally new research.

Such a study not only serves a valuable purpose for scientists and academicians, but it is also valuable for the public interest and education. Such a study undoubtedly would be used as a base in the proposed development of a visitors center/museum in the immediate Las Cruces area. There is no question that the site already attracts much attention world-wide already, which is only going to increase as further discoveries and developments occur in the immediate area. Inevitably this proposed Monument would attract visitors like Dinosaur National Monument presently does. Without such a study, much of the scientific interpretation of the area for the visitors center/museum would be much less effective and inadequate at many points.

Adequate appropriations should be added to existing Department of Interior funds to initiate the study and develop this area into a unique and informative National Monument. The Smithsonian Institution should continue in their capacity as the host scientific organization, working with other institutions and researchers as the work warrants. Such a Monument could be overseen by either the National Park Service, or, if adequately funded, the Bureau of Land Management.

In conclusion, the Prehistoric Trackuays National Monument will undoubtedly be a source of local, state, and national pride as a showcase for a long-lost community of courageous life forms. A lasting legacy of such a Monument will be a renewed commitment to try our best to protect this fragile planet and all of the marvelous creatures it contains.

Again, thank you for your interest in developing this remarkable national resource.

Senator BINGAMAN. Jerry, thank you very much.

We had a very good hearing, I thought, out in New Mexico. At that time I had a chance to ask you a variety of questions. I will not go through all that series of questions again today. But I do think what you have encountered here and what you have identified and brought to light is very important. I think, hopefully, before we conclude this Congress, we can pass this legislation to get the study underway; and then, as a result of that study, go ahead and take the additional action that is required.

I think it is a very important initiative that you have got us all focused on. You deserve the credit for it, for having identified the potential and having brought it to the attention of a lot of others.

I congratulate you and I thank you for coming back here to testify. I think the testimony of the Federal agencies is certainly supportive of what we are trying to do here. I think that is a tribute to the importance which they attach to the work you have done.

I do not know of any other matters that we need to try to conclude in this hearing. We will conclude the hearing and try to act as quickly as possible in the legislation.

Thank you.

[Whereupon, at 12:10 p.m., the hearing was adjourned.]

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